

Mr. Abrams: I'm going to take it in parts.

Chair Anderson: Okay.

Mr. Abrams: Shall we start with the three (3) that we can dispense with today?

Chair Anderson: I don't think we need a motion on those to proceed. It would be for the ones that we're going into formal Contested Case hearing, and determining...and perhaps our Attorney can clarify, but my understanding in terms of the options and where there is an adversarial position from the Applicant going into Contested Case hearing, that that would be a...setting it for the Contested Case hearing. Whether or not we have a date now, that's typically what happens is that the Department Clerks will contact the parties and arrive at a date that works for the Commission, if the Commission is going to hear it, or the Hearings Officer sets up a pre-hearing meeting and arrives at the timeframe for the evidentiary hearing.

Mr. Abrams: So, Madam Chair, does that mean once we agree to set it for Contested Case hearing, the last meeting in July deadline for these Agency Hearings is no longer controlling?

Ms. Higuchi-Sayegusa: Yeah.

Mr. Abrams: Okay. I'd like to make a motion that we set 2.c., 2.d., 2.h., 2.h., i., j., k., and l.

Mr. Hull: If I could interject, the...for item number 2.j., is not an adversarial interest. The Department is recommending approval for Samuel A. and Eugenia Caliendo.

Mr. Abrams: Withdraw that. I'll start again. Motion to set for Agency Hearing items 2.c., 2.d.

2.b. I'm going to take later because there is an issue about postponing that now okay.

So 2.c., 2.d., 2.h., 2.i., 2.k., 2.l. Do you want to...? That would be my motion to set it for Contested Case hearing. As to whether or not it's in front of the Commission or a Hearings Officer, can we decide that right after...? Because it's got to be one or the other right? I don't know whether...I don't know the sentiment of the Commission in regards to handling this type of volume right now, or part, or some, or what. We do have that choice?

Ms. Higuchi-Sayegusa: Yeah, I guess we can do that in parts, but I mean...I think there's a general consensus that we are in Contested Case, so now it's really a matter of Hearings Officer, Commission.

Mr. Abrams: Yeah. Okay, so to...well I make that motion to Contested Case and...okay, I'll make it easy...in front of the Commission.

Chair Anderson: Do we have a second?

Mr. Mahoney: Second.

Chair Anderson: Okay, discussion? Any discussion from the Commissioners?

Mr. Abrams: Well, I'm not so sure I really want to do all of it. (Laughter in background) But I don't know. That's a lot of other effort between now and whenever, but I guess that's the way it goes, right?

Mr. Keawe: So just for my clarification, so that we serve as a body as what a Contested Case Hearings Officer would do?

Mr. Abrams: Yes.

Mr. Keawe: Including calling witnesses and all that stuff?

Mr. Chun: No, you're not calling witnesses.

Ms. Higuchi-Sayegusa: So, just to clarify, so I think we've done at least once before, but this body will act as the quasi-judicial body that hears the evidence. The Chair will act as the Presiding Officer, and would call up, you know, would be the interface in the judge that interfaces between the Parties and... But basically, you folks are going to be the judges, but that also comes into play, scheduling. We'd have to make sure that we have quorum for each of these Contested Case days, which may or may not be challenging for you folks. It might be a full day of evidence and then coming back again thirty (30) days later, in most scenarios, thirty (30) days later to set it for decision making. And then you'll deliberate and make a decision based on the evidence you've heard.

Mr. Keawe: So as far as...typically, as far as the amount of time to actually hear the case and make a decision, are you talking about one (1) day or several days or...?

Ms. Higuchi-Sayegusa: Well, I guess it depends on the parties, but as we've seen at least in one (1) case prior...two (2) cases prior...it's multiple days of just pure evidence. Because you know, both parties are afforded their opportunity to present direct...to call up witnesses, allow them direct testimony, so the Department will put on its case and then the Petitioner will be able to cross-examine each of the witness, and vice versa. Then the Petitioner would be able to come and call their witnesses, and the Department's attorney will be able to cross-examine, and so it's a process for each witness and you know, it could take up to a couple of days of just receiving testimony.

Chair Anderson: Any other comments? I'll...

Mr. Katayama: I guess my...what I'm trying to resolve is the issue of fairness, in terms of presentation of facts. Now the Applicant's attorney has stated that he feels that the Commission hearing the Department's recommendation as biased without their ability to present the facts. And I'm not sure if the difference between having a Hearings Officer with their appropriate minutes of each of...because it's verbatim. It's just a matter of, do you sit through...and if there are any, to me, any questions or issues that arise in the process before a Hearings Officer that does not preclude the Commission members of broaching those questions to either the

Department or the Applicant. Now, to the extent that when you want to address those, is that during the process of the presentation of facts or do you want to do it by looking at the minutes as presented by a Hearings Officer? And I guess...could we, as a Commission, ask that the Conclusions of Law from both parties be submitted without the Hearings Officer presenting his findings? And that way it will rest with this body.

Chair Anderson: Okay, so I've just been put on notice regarding the tape change request, so if we can hold off on the answer to that question. We'll take a caption break for ten (10) minutes.

The Commission recessed at 2:52 p.m.

The Commission reconvened at 3:09 p.m.

Chair Anderson: Call this meeting back to order. We left off with a question from Commissioner Katayama. If you can restate your question again.

Mr. Katayama: The question really centers around the ability of the Commission and its members to revisit any part of the testimony or proceedings that went before a Hearings Officer. Have we given up any ability to further delve into any portion of the testimony that was presented to a Hearings Officer?

Ms. Higuchi-Sayegusa: And so just to kind of explain the process before a Hearings Officer versus those handled...Contested Cases handled by the Commission, the Hearings Officer would in essence be on behalf of the Commission. He would take evidence and you know, compile a report and submit each...any Proposed Findings of Fact, Conclusions of Law and reasons, and recommendations that he has including...and also the record would contain a petition, the notice of hearing, motions, rulings, orders, transcripts of each of the hearings, any documentary evidence, stipulations, findings. So basically the whole record gets transmitted to this body, and you have the...everything before you to review. Then there'll be opportunities for the Parties to take exception to whatever is in the record seven (7) days after receiving that packet, the record. Then the matter will be set for decision making and the Parties will be...come back to the Commission and orally argue, like a final oral argument, before the Commission. The Commission at that point would be able to decide on any exceptions, so if there's any particular thing within the record that one party or the other disagrees to, that would be sorted out. And the Commission, at that point, can render a decision; adopt one of the Proposed Findings of Fact. Or you can reopen the docket and actually take further evidence at that point on any particular...if there's anything in dispute or anything you want more evidence submitted on; you have an opportunity to reopen it and to revisit the case at that point. So the short to the answer is there will be an opportunity for this body to interface with the Parties and to take additional evidence if you folks choose to do so. And you know, I think the procedures, as its set up by the rules, it's really...the Hearings Officer will be taking the evidence, but everything gets transmitted back here and you folks do have oversight over the decision. Also, you can request both parties subject Proposed Findings of Fact, Conclusions of Law and then base your decision on each Party's proposed submittal; similar to if you folks were to handle the full Contested Case yourself as a body.

Mr. Keawe: Once it goes to the Hearings Officer and his verbatim record is submitted, we can only ask questions based on what's on the record. Is that true? Or can we ask other questions that were not included that we might have?

Ms. Higuchi-Sayegusa: Like I said, I think if there's something that you...some piece of evidence that you wish to receive, you could reopen the docket after receiving the record as it was developed by the Hearings Officer...or accepted by the Hearings Officer.

I think Mr. Katayama summarized it kind of nicely. What you're really...what you're losing out on is the ability to simultaneously question the witnesses as a body, and also obviously hear and see each witness, you know, through the process.

Chair Anderson: Any other discussion from the Commission?

I'd just like to point out, I know that my...personally trying to work out a schedule in which to hold several Contested Case hearings within a full-time work schedule would be very difficult on my schedule and it may prolong the process, given that I understand that we're not just attempting to schedule one (1) individual in the case of...as it would be with a Hearings Officer, in which that is...they've been contracted to that work. I'm sensitive to my fellow Commissioners, you know, everyone has their particular day jobs and being volunteers and having that amount of time to set aside away from...it may be a possibility for some. I can say, for me, it would not be possible to set these for hearing within the next six (6) months. All of them, if they were to take 3-5 days, looking at the timeframe, that would be likely. So I would not be supporting that all the matters go before the Planning Commission.

Mr. Abrams: You also had something I need to...?

Chair Anderson: Oh, I checked it and it wasn't the case, so...

Mr. Abrams: Oh, okay.

Well, I guess my discussion after hearing a number of this is you're probably right. It's going to be almost a difficult task to possibly render some sort of decision making for the applicants in as quick a timely manner as we can. So the Hearings Officer may very well be the only expeditious way to go. So I may be changing my mind at this point.

Chair Anderson: Okay, so in terms of options, we could either withdraw the motion or we can go ahead and move forward on the motion, and see if it is approved or not with the Commission. It depends if...you made the motion so...

Mr. Abrams: I'd like to withdraw the motion.

Chair Anderson: Okay. I need the withdrawal of the second as well.

Mr. Mahoney: I'll withdraw the second.



Chair Anderson: Okay. Do I have another motion?

Mr. Abrams: Motion to refer to a Hearings Officer...go down through the list again...number c, number d, number h, i., k., and l.

Chair Anderson: Okay.

Mr. Mahoney: I'll second that motion.

Chair Anderson: Okay, and any discussion?

Mr. Mahoney: Madam Chair, in fairness to all and the amount of time that it's going to take, I think, you know, after hearing the discussion that a Hearings Officer is the best route for the Commission is in my mind. So that's why I'm going to be voting and that's why I seconded that amended motion.

Chair Anderson: Okay.

Mr. Abrams: I see the tremendous burden it would be on you as our Chair. Yeah, so in terms of that, because you have a livelihood to go and we're same thing, so time wise I think it'll be quicker than that and that's more important to me right now at this point.

Chair Anderson: Okay, so is there any other discussion?

I did want to note, you know, this is a very important matter for the County and looking at all the interests that in terms of protecting everyone's rights and allowing there to be the Contested Case going into the formal Contested Case, allowing due process, allowing witnesses to be heard, and heard under oath, and cross-examination, and all such on a time that would give...afford each applicant and each party, the Department, the necessary time to go through those. I think it's an appropriate path to move forward and in terms of the Commission having the ability to review all of the transcripts and also if the Commission has any further questions, we can reopen the evidentiary portion to allow us to ask questions if that's necessary. I think that affords the Commission the adequate information to be able to render the best decision that it can, so I support the motion.

Alright, so given this, we'll go ahead and do a roll call vote.

Ms. Higuchi-Sayegusa: Commissioner Abrams?

Mr. Abrams: Aye.

Ms. Higuchi-Sayegusa: Commissioner Mendonca?

Ms. Mendonca: Aye.

Ms. Higuchi-Sayegusa: Commissioner Katayama?

Mr. Katayama: Aye.

Ms. Higuchi-Sayegusa: Commissioner Mahoney?

Mr. Mahoney: Aye.

Ms. Higuchi-Sayegusa: And Commissioner Keawe?

Mr. Keawe: Aye.

Ms. Higuchi-Sayegusa: You have five (5) ayes.

Chair Anderson: And I "aye" as well.

Ms. Higuchi-Sayegusa: I'm sorry, Chair. (Laughter in background) Chair Anderson, I'm sorry. Six (6) ayes.

Chair Anderson: Okay, and no opposition. Okay, the motion carries 6:0. Thank you.

And so this matter has been referred to a Commission Officer. They'll be in touch with the Parties in terms of setting up a pre-hearing schedule and the evidentiary hearings, and the schedule as it will go forward.

Mr. Chun: Madam Chair, I understand that it's the Commission's decision and I understand what their position is, I just want to reiterate the matter was not on the agenda for a Hearings Officer, but more importantly, I just want to request if the Commission would consider...because I guess the Commission was sensitive to the time, if you are going to do a Hearings Officer, I would request that the Commission specifically instruct the Hearings Officer to have hearings within a reasonable time. I believe six (6) months you thought would be unreasonable, and I would agree with that. I would think since you are paying this Hearings Officer, giving him a deadline to have the hearings no later than mid-July, within two (2) weeks, would be more than reasonable given the fact that my clients have put their whole life on hold until the Hearings Officer decides to do that. And the reason why I mention it, just for the record, is that we've...we had a Hearings Officer appointed back in February for Ms. Guyer's homestay application in Wainiha. That was done in February, this is now June 23<sup>rd</sup>. We have not heard from the Hearings Officer yet; way past four (4) months, five (5) months. And again, at least in Ms. Guyer's case, the Planning Director came out and said, during this time period we're not going to enforce, we're not going to send cease and desist, we're not going to submit to a prosecutor for that...for action because we consider that this application and the process to be a compliance plan. And I requested that same consideration for my clients now, they didn't want to do that. Okay, understood; however, given the fact that they don't want to do that then I think is only fair then to hurry this matter along and you are paying somebody to do that. And for a Hearings Officer to be appointed back in February and have not contacted us on June 23<sup>rd</sup>, you're basically telling that client and all other clients in the situation that we don't care.

Mr. Trask: Mauna Kea Trask, for the record, on behalf of the Planning Department. I think we have to speak with the Hearings Officer to figure out what the schedules are. We have no intent to delay these matters unnecessarily or be unreasonable with their scheduling. I don't know how you can...at this time without knowing anything, I mean talking about schedules and my understanding is this Hearings Officer is likely to be from off-island, so you're talking about traveling, everything like that. I think it would be an unreasonable request at this point to request a hearing in two (2) weeks, without knowing anything further, so just with that.

Chair Anderson: Okay. To address the concern, in terms of the appropriateness of setting a timeframe, I think again this is going to be a matter of scheduling amongst the Parties, but I appreciate that you have brought it to the Commission's attention regarding the timeframe that the Hearings Officer has taken to contact, and so I will be in contact with the Commission Clerk in terms of the scheduling and to encourage that the initial contact and pre-scheduling happen within a reasonable time. So I agree with you that that should be done within...at least the pre-hearing schedule should be set within a reasonable time and I believe thirty (30) days is reasonable to...just in terms of initial contact. But in terms of setting a deadline for the evidentiary hearing that again is going to be a matter of...it's going to depend on each particular case and the number of witnesses and so on, so I would not look to try to set a final deadline for the evidentiary hearing.

Mr. Chun: Understood. Just raise that as a point of objection though, just for the record, but I understood...I understand.

Chair Anderson: Okay. Thank you and that would be my recommendation as the Chair that the pre-hearing scheduling conferences be set within thirty (30) days of the recommendation from the Commission to set a...the matter to go before a Hearings Officer.

Alright, so having dispensed of much of the Agency Hearing Calendar, it's my understanding that the next matter on the agenda is the Class IV Zoning Permit, 2.e.

Mr. Chun: Madam Chair, we still have b. I guess Mr....Commissioner Abrams was going to address that at a later time.

Chair Anderson: Thank you for that correction.

Mr. Keawe: Didn't you say you would take up Item b separately?

Mr. Abrams: Yeah, b. would be separate.

Chair Anderson: So for clarification, we're looking back at the transcripts. It was my understanding that the second motion did include b.

Mr. Hull: No. To interject Chair, it did not include b.

Chair Anderson: Okay, so thank you for the clarification. We're...

So it's been clarified that the transcripts...that the second motion did not include Item 2.b., so as to Item 2.b., that's where we're at at this time. Do we have a motion regarding this matter?

Mr. Abrams: Madam Chair, I kind of want to go over exactly where we were when we took the sidetrack here in regards to all of this. And that had to do with Jonathan's objections to...or I guess it was our Clerk objecting to Jonathan questioning Staff, right?

Mr. Chun: Right.

Mr. Abrams: As...and his interpretation of Chapter 6 of our Agency Hearing in regards to his right to do so. And we...I don't know whether we decide that or you decide that, or then at that point the issue at that point was your position that you would prefer this to continue on in some form, rather than head to a Hearings Officer?

Mr. Chun: If I may, what was happening is I was asking questions of the Department's witness. Mr. Dahilig objected and he said he needed time to prepare and to call the County Attorney's office for assistance, I believe. And then the second part of the statement was we would want to...if it's a full Contested Case for this one, b., he wanted a continuance to prepare and also because...to follow the rules. That's why I objected to that saying we already started the presentation of evidence, the Commission already heard the Department's position, already questioned the Department's witness, and under the rules I get to question the Department's witnesses too. Once the Department finishes that, then my client gets to say her story and present her witnesses and her presentation; and we're prepared to do that. And my position was to stop in the middle of that on the basis that we're not ready for it, is unfair because they already started taking...the Commission already heard witnesses. But you know, I'm sure Mr. Trask has a position on that, too.

Mr. Trask: For the record, Mauna Kea Trask. And in looking at a matter of fairness, I mean, as you all know, under the Kaua'i County Code, and we're looking at here Section 8-3.1(f), Class IV Zoning Permits 3, within sixty (60) days after filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. Report shall be sent to the Applicant, which Mr. Chun received, to the Planning Commission, which you received, to any persons who have duly requested the report, which I'm sure people behind me have received, and shall be made public. So in this case, the only person who didn't receive that report was myself, the attorney for the Department. And if we're talking about fairness, seems like everyone had an opportunity for fairness except the Department. This is not to be interpreted as to lay blame or to cause anything, but if we're talking about order and process and decorum and rules, I think it is most fair to all parties that again, consistent with the other issues, we can continue these proceedings...Mr. Chun can continue to cross, it can be revisited, if it's for any post hearing procedures, you can even reopen the docket if there's further questions or exemptions filed. So it's...I would take the position on behalf of my client, they are entitled to representation, they are entitled to due process. As the County Attorney, the office is a legal representative for all Departments, and we request the Department be afforded that legal representation.

Mr. Chun: We object.



Chair Anderson: Okay. So we have this remaining item where there is an adversarial nature. Do I have a motion from the Commission in terms of proceeding on the Contested Case or referring this to a Hearings Officer as was done on the previous matters?

Ms. Mendonca: I make a motion that we move this case to the Hearings Officer as we have the others earlier.

Chair Anderson: Okay. Do I have a second?

Mr. Mahoney: Second.

Chair Anderson: Okay, discussion. Discussion from the Commission?

Mr. Abrams: I'm...I mean, I heard Staff and I realize he's objecting to not being able to question Staff, but I haven't heard the Applicant. And I don't know whether at that point we can ask to listen to the Applicant and ask him questions like what we did there, and then stop, but that would be my preference. As a result, I wouldn't be prepared to suggest to go to a Hearings Officer quite yet. So I don't know whether that's possible or not.

Chair Anderson: Do you want to answer this or...?

Ms. Higuchi-Sayegusa: I guess the source of your concern is that it's...there's questioning that was initiated, but not an opportunity on your part to question the Petitioner. It seems...but this...I mean it kind of revealed the adversarial nature of the proceeding and I think that at that point that's why we started in the discussion of the Contested Case and whether it should go there. So as we've...I guess we've talked about with regard to the other cases, I think because it is adversarial, you know, we...I think the consensus was that it should really be in a Contested Case process, subject to HRS Chapter 91, whereas...whereby both parties are afforded that opportunity to present and present testimony, and respond, and be prepared.

Chair Anderson: And my comment in terms of the...what's distinguishing in the matters that have come before us today. Obviously we're in a position where we want to afford all the parties their due process, and also give them the advantage to have their case fully heard and that's why we're all here today. The parties have their application that was part of our packets, as well as the reports on the applications. In terms of the process that we're in, it really seems to depend upon, obviously the outcome of...or the recommendation from the County. Attorney Chun is very willing to go for the informal process if the County is recommending approval for his clients, but then was unwilling to really set forth the...when that formal process started, and I think that's where it was unclear from the get-go whether or not we were going to be in the informal process today on these matters or if a formal request for the Contested Case was being set forth. And that's...it's my understanding that that's why the Department made that statement that okay at this point if we are going to be cross-examining, that the...and that instead of the Planner giving their report that they are now a witness that they may need to have time to prepare further; that was the position of the Department. So in terms of moving forward, I think that out

of caution and protection on all sides that if there is going to be an adversarial nature that we provide that forum, and that correct forum is the Contested Case. That's my comments.

Mr. Abrams: Call for the question.

Chair Anderson: Yeah, I'd like to make a call for the question.

If you could repeat your motion.

Mr. Abrams: It was her motion.

Chair Anderson: Your motion.

Ms. Mendonca: My motion?

Chair Anderson: Yeah.

Ms. Mendonca: I move that we take this particular case, which is F.2.b., and let it...leave it at the Hearings Officer's recommendation.

Chair Anderson: Okay, so refer the matter to the Hearings Officer. Okay, and we had a second?

Mr. Mahoney: Second.

Chair Anderson: Okay, so discussion? (None) All those in favor? (Voice vote 3 ayes) Any opposed?

Mr. Abrams: Aye.

Chair Anderson: Okay, noting one (1) opposition and...

Mr. Keawe: Two (2). Aye.

Chair Anderson: Okay. So we have...and I vote in favor, aye, so we have four (4). So the four (4) is the majority, the motion carries 4:2. Thank you.

Mr. Chun: Madam Chair, I understand the actions of the Commission. I just object for the record for that that it deprives my client of due process. But more importantly, in order to...I would suggest and just a suggestion, that not only for this Contested Case, as the Commission has decided, but for all the other Contested Cases that the Commission members return all of the reports and communications they received, other than the public ones, to the Department and destroy any other copies they might have. Because that's the situation, and you know on one hand the Commission is saying is a Contested Case and you have the right and we're not going to take any evidence, and in fact the Department might have said that's not evidence, but if that's not evidence and we're in a Contested Case, they shouldn't even have it.

Mr. Hull: I would also interject then. For the attorney, Mr. Chun, are you also requesting that they return the application which also serves as a legitimization for the permit?

Mr. Chun: No, the application is like...if you go to the court, the application is like a complaint; it starts the proceeding.

Mr. Trask: And for the record, Mauna Kea Trask. I would then postulate that therefore the Planning Department's support is the answer and then you proceed to evidence at a later point. Furthermore, under the Kaua'i County Code as I stated earlier, 8-3.1.f.3., the law requires this to be produced, to be given to the Applicant, to be given to yourselves, to be given to anybody else who requests it, and it's a public document. I don't think you can legally or practically destroy copies of this public document; it's a public document, so with that...that's all.

Mr. Chun: I'm just asking to be consistent. If the Department considers their report not evidence, and hence I can't question them, then the report is not evidence. If it's not evidence, it shouldn't be in.

I didn't take that position that was the position the Department took today.

Ms. Higuchi-Sayegusa: I think at this point, it...there is the application and the Director's Report, and everything is going to be set for a hearing. At that point, both Petitioner...the Petitioner will be able to question and clarify and present evidence at that point. It becomes an issue in timing and when the body who's going to, you know, analyze and accept more evidence at what point they received it. In any case, it'll be part of the record, and at the hearing date the Petitioner will be able to submit testimonies and question based on all of the application and the Director's Report.

Mr. Chun: I hear you. It's just that the situation is the Commission has referred everything to the Hearings Officer. The Hearings Officer is entitled to take evidence and documents in support of the Parties' position. The Commission is supposed to just only be looking at the formal record that the Hearings Officer has created, and that's what I'm trying to get at. That the Hearings Officer hasn't created a record, you have a record on your own which you're reading now without the Hearings Officer; and that should be corrected.

Mr. Trask: And so given that, I mean at this point, the Planning Department would therefore move to strike all of the testimony taken, any presentation, and then re-begin the taking of evidence in front of the Hearings Officer. If the parties will stip, I think we can address that hurdle via that way.

Want to do it again?

Mr. Chun: Yeah, well no, on 1-6-11 specifically states public testimony. The presiding officer shall suspend the rules and open the Agency Hearing to the public as required by law. Cross-examination of public witnesses shall not be allowed by the Petitioner and Intervener. That was done today. Point D, close public hearing (sic). Upon the admission of all or public evidence,

the presiding officer shall close the public testimony. That was done today. I'm not talking about the public testimony, I'm talking about a Party's position and evidence and documents.

Mr. Trask: Therefore to clarify my statement, what I meant was, in order...under 1-6-6 of the Planning Commission rules, waiver of procedure. Any procedure in a Contested Case may be modified or waived by stipulation of the Parties and informal disposition may be made of any Contested Case, etc. It's not going to happen today, but in order to address Mr. Chun's concerns in effort of good faith, the Department would be fine to stipulate at this time on the record to strike that portion of the testimony provided by Mr. Hull, his report, any questions or answers elicited by Mr. Chun on behalf of his client, and we can begin the evidentiary portion, not the public hearing, etc., correct, but begin the evidentiary portion before the Hearings Officer in order to facilitate and waive the procedure as appropriate.

Mr. Chun: We would stipulate to that.

Chair Anderson: I'm glad the Parties could come to an agreement. Thank you.

Mr. Keawe: Madam Chair, are we done with that one?

Class IV Zoning Permit Z-IV-2015-23 and Use Permit U-2015-22 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Kipuka Street in the Weliweli Houselots Subdivision in Po'ipū, situated approx. 150 ft. east of the Muku Place/Kipuka Street intersection, further identified as 1960 Muku Place, Tax Map Key 2-8-024: 020, and containing a total area of 11,174 sq. ft. = Bret K. & Ellen Knopf, Trust.

Ms. Higuchi-Sayegusa: Okay, so I believe...Chair, yeah we are on Item F.2.e.

Mr. Dahilig: Madam Chair, we are on Item F.2.e., a Class IV Zoning Permit Z-IV-2015-23 and Use Permit U-2015-22 to allow conversion of existing residence into a homestay operation on a parcel located along the eastern side of Kipuka Street in the Weliweli Houselots Subdivision in Po'ipū, situated approximately 150 feet east of the Muku Place/Kipuka Street intersection, further identified as 1960 Muku Place, Tax Map Key 2-8-024: 020, and containing a total area of 11,174 square feet. Applicant is Bret K. and Ellen Knopf, Trust.

And again, Kaaina and Marisa will be making the presentation on behalf of the Department.

Staff Planner Marisa Valenciano: Good afternoon Madam Chair and members of the Commission. I'm going to go ahead and summarize my report, if that's okay with you.

Okay. The proposal is to convert an existing residence into a homestay operation. The residential dwelling contains four (4) bedrooms and four (4) bathrooms. As represented, the Applicant will continue to reside within the dwelling while operating as a homestay. For transient accommodation purposes, the homestay operation is proposed to utilize three (3) bedrooms within the residential dwelling.



Mr. Hull: If I could interject real quickly here, there is some confusion with the application actually in this process. In that, in portions of the application it mentioned (4) bedrooms and the later portions of the application it represented five (5) bedrooms. The Department was initially under the representation of five (5), and had that in this report, but later upon further review of the application, there was some confusion about that. So later on, we requested the Applicant to clarify that representation.

Ms. Valenciano: Okay. Then I'm going to jump ahead into portions of the preliminary evaluation. So point number four (4), the Applicant has operated a homestay for approximately thirteen (13) years. The Applicant has ceased operating the homestay. To date, the Department has not received any complaints concerning the operation of a homestay on the subject property. The absence of any complaints against the homestay operation by surrounding neighbors living in or frequenting the surrounding area is demonstrative of the operations' compatibility with the surrounding area. Neighboring property owners have submitted letters for the record that are in support of the subject homestay operation. In the case of homestay operations, the presence of the owner at the site acts as a self-regulating mechanism. That is to say, activities that could significantly impact surrounding neighbors are often prohibited by the owners of homestays because such activities are just as, if not more, impactful on the owners who are residing on-site. The noise and other impacts often associated with TVRs, where no property owner is present, are often not found at homestay operations because of the owner's presence and self-regulation. The proposed operation should not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the surrounding area, and should not cause any substantial harmful environmental consequences. The Applicant currently maintains a homeowner's exemption as verified through the County of Kaua'i's Real Property Tax Assessment records. The Applicant should maintain a homeowner's exemption for the homestay site to ensure that the homestay operation is within the same primary residential site where the owner resides. Further, the Applicant should be required to be on-site and available to guests whenever the homestay use is occurring. To be mindful of neighboring residential properties and for the safety of visitors, the Applicant should inform the guests of the following: (a) all vehicular parking related to this use and property including maintenance vehicles shall be accommodated on the subject property at all times. On-street parking shall not be permitted at any time. Point (b), guests shall be informed that elevated noise activities or amplified music shall not be permitted after 10:00 p.m. These limitations should be incorporated into a compulsory "Safety for You and Your Neighbors" and "Welcome and Notice" posted within the dwelling, and within any and all contracts and advertisements for use of the structure from the date of the approval. Copies of these documents should also be provided to the Department. To help facilitate emergencies and immediate concerns by neighboring residents or guests, the Applicant should post an outdoor sign in a visible place within the front of the subject property for the purpose of providing the current homestay zoning permit number and the 24-hour contact information. Point thirteen (13), in order to ensure that the homestay operation continues to meet the conditions of approval, the Applicant should be required to annually recertify the operation with the Planning Department. If approved and in accordance with Section 11A-2.2(a) of the Kaua'i County Code, the Applicant shall submit to the Planning Department Environmental Impact Assessment, EIA, fees for the project. The EIA fee for the subject proposal is assessed at \$100.00 per the minimum number of parking stalls required by the Comprehensive Zoning Ordinance. The minimum number of off-street parking stalls serving the proposed homestay

operation is three (3); therefore, prior to operation, the Applicant shall submit to the Planning Department an EIA fee of \$300.00.

At this point, I'm going to hold off on the recommendations and conclusions until the Applicant speaks.

Chair Anderson: Is the Applicant here?

Mr. Chun: Good afternoon. Jonathan Chun on behalf of the Applicant, and with me is Ms. Ellen Knopf.

Ellen Knopf: Aloha Planning Commission. I come in peace. I've been offering vacation rental on the island since 2000. My husband and I came from Palo Alto, California in '98 with four (4) children. We purchased Kōloa Landing Cottages; we ran that for a number of years. In addition to, in 2001 we purchased a home in Weliweli Track; five (5) bedroom, four (4) bath home, which is now a four (4) bedroom, four (4) bath home. We combined two (2) of the smaller bedrooms into one (1).

Long story short is, I believe in homestays. We...my husband and I just returned from Portland where three (3) of our adult children live. We stayed in an Airbnb there for three (3) weeks. We were lucky enough to do that. We planned this for the last couple of years. We were lucky enough because of paying \$80.00 a night to stay in this particular Airbnb rental. Quite frankly, there's a lot of people that couldn't afford to come to the island unless they could find rentals such as ours, and a lot of people aren't wanting to be in the resorts or even a TVR. We get a lot of single women, we get a lot of couples, honeymooners, and our rates are very affordable. I sit and speak with each of my guests, talk story, tell them about the island. My mom was born and raised on O'ahu and as one (1) of eight (8) children, I spent a lot of time at my grandparents' home in Makiki on O'ahu. My grandfather, I remember one day, he's one (1) of seventeen (17), my grandfather one day was talking to one of my aunts and she was complaining about something to do with tourism. This was probably about fifty (50) years ago and my...I remember my grandfather getting a little upset and saying hey, the mainland, they need us; and I really believe that. I believe I make a difference on this island; like I say, we sit with each of our guests and just offer the Aloha spirit. I'm proud of it; I love what I do.

My husband had a traumatic brain injury in 2008. We've never taken any kind of unemployment. We work hard. I don't know what my husband would do without the homestay that we offer at our property. I have seen people standing out in the gardens with him; saw one man in his underwear one morning, standing out there talking to my husband. But our guests love what we do, we're proud of it. I think I mentioned earlier, my great-grandfather opened the first bar/saloon, lodging accommodations in Waimea back in 1899 and I kind of feel like I'm great-grandfathered in, but I've been doing this for a number of years. I pay my GET and TAT every month since 2000. And I don't know what else I need to say. Thank you.

Chair Anderson: Thank you.

Mr. Chun: Thank you. In answer to the questions of the Department, yes the floorplans show a five (5) bedroom, but according to Ms. Knopf, the application is correct. They enclosed or they combined the two (2) smaller bedrooms to make it only a four (4) bedroom at this point in time. I believe the property was inspected, so the Inspector can confirm whether or not there's four (4) or five (5) bedrooms, but according to Ms. Knopf, it is now a four (4) bedroom as opposed to a five (5) bedroom. And she is open to limiting it, only because there are four (4) bedrooms now, to renting out only no maximum...no more than three (3). We can answer any questions that the Commission or the Staff might have.

Chair Anderson: Okay, are there any questions for the Applicant?

Ms. Mendonca: I have one. Jonathan, she has a homeowner's exemption right now, yeah?

Mr. Chun: Correct.

Ms. Mendonca: Has she always had this from day one?

Mr. Chun: I don't know, but I know she...on the tax records they have a homeowner's exemption.

Ms. Knopf: I've actually been classified as vacation rental for the last couple years, and this year they have me classified as commercial home use. I applied for my TVR on the property about...back in 2010, and I kind of got run through the...mill, I don't know what to call it, and then turned down. The permitting process for what I run has been very confusing. I can't begin to address...tell you what I've been through except that I've been patient. I've always heard that slow and steady wins the race, so I'm hoping to be able to continue what I'm doing.

Ms. Mendonca: But you've had the homeowner's exemption all this time?

Ms. Knopf: Yes.

Ms. Mendonca: Okay. No further questions.

Mr. Keawe: I have a question, Madam Chair.

Chair Anderson: Yes.

Mr. Keawe: Just real quick, what are your rates? In compared to...obviously we know what all the hotels are charging, especially in that area.

Ms. Knopf: You know, I have a little bit of a sliding scale. Right now, my rentals go for about \$100.00 to \$115.00 a night; of course lower if I have something available and someone's coming in. I'll give you my website later.

Chair Anderson: What's the occupancy per room?

Ms. Knopf: Both of the rentals have queen-sized beds in them, so one (1) to two (2). And when the four (4) children were living at home, there were six (6) of us there. I never have more than six (6) on our property.

Chair Anderson: Any other questions?

Mr. Abrams: Yes. Jonathan, the...your proposal is to utilize only three (3) bedrooms out of the four (4)?

Mr. Chun: Correct.

Mr. Abrams: And so which bedroom are you not planning on utilizing?

Mr. Chun: Any one which Ms. Knopf is in. No, I'd have to ask Ms. Knopf which bedroom that she stays in.

Ms. Knopf: Well, it's called Bret and Ellie's room.

Mr. Abrams: Okay, let's see. Is it on the plan here?

Ms. Knopf: It would be...Louie, it would be the back or at this point, the front bedroom that has been combined. We had two (2) small bedrooms on the front of our house. They have now been combined to one (1) larger bedroom; that's where we're currently residing.

Mr. Chun: It's the one next to the dining room. The two (2) bedrooms that you see to the left of the dining room were combined. I guess that one is now Ellie's room.

Mr. Abrams: Okay.

Chair Anderson: Any other questions?

Mr. Abrams: Thank you.

Chair Anderson: I wanted to know if the Applicant has any response. I saw...I believe it was the comments from the Department of Health regarding...recommending an upgrade to...from cesspool to septic.

Ms. Knopf: My understanding is that they didn't recommend it; well, maybe it was a recommendation. My understanding is the Health Department said what we're doing now is fine, and at some point it could be considered as a recommendation, but I didn't...I didn't read it to say that they were looking for us to do that now.

Chair Anderson: Do you have any plans to upgrade to septic system?



Ms. Knopf: I'll tell you, from the cease and desist that's been going on, right now, financially, we wouldn't be able to do that. But at some point should it prove or if we're told that it's mandatory, of course I would comply.

Chair Anderson: Okay.

Mr. Chun: If I may, the comments from the Department of Health was that the existing wastewater system can continue to be utilized provided that wastewater flows do not exceed 1,000 gallons per day, which is its design capacity. The Department of Health strongly encourages the Applicant to upgrade the existing cesspool to a septic system at this time. The continued use of the cesspool for these purposes cannot be guaranteed as future legislative may require an upgrade. However, these comments only apply if the floorplan submitted in Exhibit 1 is accurate. There is discrepancy between Section IV, which state then again the four (4) and five (5) bedrooms, so I gather since now we have five (5) bedrooms, the...we are under the count. For those of...Commission members, the Department of Health rules say a maximum of five (5) bedrooms per septic system, or cesspool, and I think that's why...the reason why they're concerned because at the application, the plans said five (5) bedrooms now it's four (4) bedrooms. So I don't believe we...at this point in time that they are concerned with that. There's no recommendation to do that. Also, I think what the Department was...the Department of Health was concerned is that they are looking at future potential changes to the requirements mandated by the Federal Government to discontinue all cesspools. I think they were just giving the Applicant a heads up that eventually you're going to have to do a septic system. When that occurs, I think the Applicant will have to comply no matter what so.

Ms. Knopf: And if I could just add in, we have never...we owned the house since 2001, we have never had any issues with our cesspool system.

Chair Anderson: Any other questions for the Applicant?

If we can go ahead and have the Planners read their recommendations.

Mr. Hull: Based on the foregoing findings and evaluation, it is concluded that through proper mitigative measures and compliance efforts, the proposed development can be considered and it should not have significant adverse impacts to the environment or the surrounding neighborhood. The proposal is generally in compliance with the criteria outlined for the granting of a Use Permit and a Class IV Zoning Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

So based on the foregoing evaluation and conclusion, it is hereby recommended that the subject request to convert an existing residence into a homestay under Use Permit U-2015-22 and Class IV Zoning Permit Z-IV-2015-23 be approved. The Department also has a list of recommended conditions of approval, which we submitted to the Commission previously on June 9<sup>th</sup>, and we stand by those recommended conditions of approval.

Chair Anderson: Does the Commission have any questions regarding the recommendations from the Planner?

Mr. Katayama: Madam Chair, question for the Planners or the Department. One of the things that we are trying to balance or characterize is the...is this a residence that is guest-oriented? Or is this more a resort that is in a residential area? How does the Department view that if three-quarters of the dwelling is subject to third-party use?

Mr. Hull: (Inaudible) an interesting question. It's hard to say because I mean, the percentage...the percentage discussion is a little hard to address just because there may be some applications that come in here with more than five (5) bedrooms, or there may be applications that come in here with less than...one (1) or two (2) bedrooms and whether or not it constitutes 50% or 75% of the dwelling, would not necessarily determine the impact that transients could have on the surrounding neighborhood. Ultimately, it would be the number of bedrooms specifically, and that threshold hasn't been specifically set legislatively. The Department attempted to, previously in legislation and will attempt to do again, to set a standard for which a certain amount of bedrooms will be indicative of how impactful an operation could have on a neighborhood. But in looking at this particular application, as Marisa pointed out I mean, the Department doesn't encourage operating without permits, but the whole determination on whether or not they should get a Use Permit is to assess whether it's going to be compatible. And like I said, while we don't encourage operation without permits, the fact that they have been operating and in this particular instance we have not received a single complaint, to a certain degree attests to the fact that they are compatible with the surrounding area. We state that in our report, we also did preface to the Applicant that should individuals come to the hearing and testify against the application, while stating they didn't officially complain about the operation previously to the Department, but that they are in fact here to testify that there are particular impacts that this operation has, then this Commission would also have to assess those statements.

Mr. Katayama: From an impact point of view, if you have four (4) bedrooms that are basically being utilized that has four (4) cars and generating a different kind of usage, as opposed to a family that has sort of a normal family structure which may have two (2) cars, I mean, how is that, again, as you move into a residential impact...I think we'll address the issue of the numbers later, but just as these initial homestay applications are being rendered, is that... I think for myself that's the challenge is that if one (1) bedroom is being utilized...and I'm not saying the Applicant is doing it poorly...the question is just from a use impact, is that...is it more resort-like or is it more residential-like? And how can you help us sort of make that judgement?

Ms. Knopf: Can I speak again? Is that possible?

Mr. Chun: It's up to the Chairman.

Chair Anderson: If the...if you want to remain at the table with your counsel, please do so. At this time, we're asking questions of the Planner and I will give the Applicant an opportunity to comment on the answers from the Planner.

Mr. Hull: To go back to Commissioner Katayama's question, ultimately we would look at the uses as transient, which is why they have to get a Use Permit. If it was determined that it's residential in nature, then this application wouldn't be before you folks. Ultimately, it's a higher intensified use of the land and specifically because it's using those rooms for transient purposes.

Mr. Katayama: Thank you.

Chair Anderson: Did you have comments that you wanted to make or clarifications regarding the question that was...to the Planner?

Ms. Knopf: Can I speak?

Chair Anderson: Yes, please.

Ms. Knopf: Okay. Just a little clarification. When we purchased this house in 2001, it was listed as a two (2) bedroom, two (2) bath rental and a three (3) bedroom, two (2) bath residence; kind of interesting. So in other words, the house was built in a way where there is...on the left side of the house as you come up the driveway, its two (2) separate entrances; there's an upstairs unit and a downstairs unit. When we first hired Jonathan, Jonathan said okay in this house, how many bedrooms were you going to use? Well, just for the sake of coming before you all, I said well, you know, three (3) bedrooms, but to be honest with you, we really only need to continue...we'd really only like to continue to use the two (2) bedrooms.

The main thing I want to say is I went around to all of my neighbors who, you know, we have for barbeques, as well as our guests, and what they like about our homestay is our neighbors have met people from all over the world. It's just an amazing, I think, gift to our neighborhood. If any of our neighbors had an issue with parking, I think they would've come forward. I've got letters of support from all of them; no one had any complaints. We're very considerate of our neighbors, which I can't imagine living in a neighborhood and not being considerate of neighbors because we're all part of our community there. So that's mainly what I want to say. Parking has not been a problem for us.

Chair Anderson: I have a question. Previously you testified that you'd like to maintain no more than six (6) people at the property, does that include you and your husband as well?

Ms. Knopf: Yes.

Chair Anderson: Okay.

Ms. Knopf: But at the same time, you know, sometimes children, young adults will come home for a visit; that's more of a transient, but as far as right now, it's just my husband and I living at the property. It's a big house for just the two (2) of us. We've put a lot of money...we have...the rooms are nice. We've put a lot of tile flooring in, bamboo flooring, we've put a lot of money in to be able to operate this homestay.

Chair Anderson: Okay, so the Department has read their recommendations. Does the Applicant have any comments on the recommendations?

Mr. Chun: No, we have no comment on the recommendation. We would agree with the recommendations as listed in the preliminary report conditions number one (1) through...is it thirteen (13)? Fourteen (14). One (1) through fourteen (14).

And also, we note...just to finish up the statement...we note the application has, attached to it, eleven (11) letters of support from the Applicant's immediate neighbors, which is (inaudible) unusual. Normally we don't have that many letters of support from neighbors.

Ms. Mendonca: I have a question.

Chair Anderson: Yes.

Ms. Mendonca: Jonathan, the Applicant just...I might have heard wrong, so please clarify this.

Mr. Chun: Sure.

Ms. Mendonca: She mentioned that, you know, she's using...two (2) bedrooms are more than enough or you suggested three (3). And under those circumstances and the concern that Commissioner Katayama expressed, as far as the volume, perhaps we should use this to say two (2) bedrooms instead of three (3)?

Mr. Chun: I can ask the Applicant whether or not she would go with two (2) or wants to maintain three (3).

Ms. Knopf: Well since I'm right here, the Applicant would agree with the two (2) bedrooms. Thank you, Jonathan.

Mr. Chun: The Applicant would agree to a reduction to two (2).

Ms. Mendonca: And then I have another suggestion, if I may. Because of the cesspool concern, and I know you may not have had any problems, I would like to suggest that there would be maybe Item 15 that within twenty-four (24) months of this approval that you have it replaced with a septic system.

Mr. Chun: When would that be?

Ms. Mendonca: Within twenty-four (24) months after this approval.

Mr. Chun: I would probably not advise or would object on that. That is not a matter of the Planning Commission; that is a matter from Department of Health. Department of Health has not deemed it at this point in time to be a violation.

Ms. Mendonca: They did not deem it a violation? I'm sorry, I didn't see that.



Mr. Chun: No. The Department of Health does not deem this a violation. The Department of Health and their comments indicated that the current capacity is proper. But I think what the Department of Health was saying is that be prepared for future regulations that might come down that would stop all septic...I mean, all cesspools on all residential. And that's true. I think they've been making rumblings about that for a number of years already. Our position on that is if the Department of Health regulations come down and require the cessation or the changing of all cesspools to septic system, the rule is the rule is the rule; we will have to comply.

Mr. Dahilig: I guess, you know, just from a standpoint of what is environmental best practice. I mean, currently, environmental best practice is to put in septic systems and these cesspools are antiquated means of, essentially, dealing with wastewater. And so I would like to, you know, proffer that part of the conversion of use here is to also potentially look at upgrading these systems mainly because...maybe because of the conversion. Again, we're having a change here and it should be in the best interest of the County to look at bringing things to an environmentally...what is the current environmental standard now. Because, as you know, cesspools are not being approved anymore by...in terms of these large capacity cesspools, so we are...I think from a Departmental standpoint, it would be best practice for us to also look at whether bringing things into what is the environmental standard currently, as part of these use conversions, is an appropriate thing.

I guess the question is, is the issue an issue of time or is it an issue of just not wanting to do it?

Mr. Chun: It's a question of time and money.

Ms. Knopf: Can I just say, I've always been of the school of thought if it's not broken, don't fix it. Now as I mentioned earlier, by all means, if we had issues with our cesspool system, which operates really nicely, I would be the first one to say we need to deal with this. But to use that as a stipulation...there is a lot of money that's gone out over the last many years. I'm not getting into what I've been through with Planning Department trying to legitimize my business, but I just want you all to know that I run a really nice rental. I offer a really nice destination for folks and I'd appreciate it if that wasn't necessary on the approval. Thank you.

Mr. Dahilig: I guess, you know, the fact of the matter is...and we deal with this constantly across the island and mainly in a lot of areas relating to sensitive areas; residential areas, these types of things. It is the EPA and the State Department of Health's desire to migrate people over time from cesspools over to septic systems; I mean, its good health for everybody. I understand the financial issue, but is it something that can be achieved over time that we migrate because of this use change to something that is more environmentally in concert with living in harmony and the environment; maybe not twenty-four (24) months, but maybe something all the lines of thirty-six (36) months, forty-eight (48) months.

Ms. Knopf: My husband would like to respond. This is Bret.

Bret Knopf: Okay, Bret Knopf, Muku Place. When we had kids living at that house, we had girlfriends, we had boyfriends; the guests are barely there. The cesspool use before was way

over the top; you know how teenagers go through the laundry, they wash the cars. We're so much more fragile than we were before, and it actually is, as she was stating over and over and over again, right now, we're going to barely make it through because of this. This was a fun little ride we've had. Yeah, if we were to sell the place, how are we going to change the neighborhood? We're not going to benefit the neighborhood by changing this...by us not doing this. We're giving massive amounts of benefit right now, and I'd say yeah, maybe four (4) years, maybe by then we'll be all fine, everything's cruising along. But there's a lot of gray hairs in this beard that only showed up this year. So...

Mr. Dahilig: Alright. And just to say that this process has also given me gray hair too, so it's mutual. (Laughter in background) And Jon, let's not make comments on hair.

Mr. Chun: My concern is it is cost; it's a cost item. But also more importantly, I mean and you're looking at the bigger picture, it is something that the Department, I gather, is searching with. The problem I would have on this issue is what about all the other bed and breakfasts that were approved in the past that didn't have this as a concern? What about all the TVRs that were approved that didn't have this as a concern? I'm not saying because the Department...because the Department of Health never raised it on all previous. So I would ask the question, what has changed factually between then and now that would say that there's a big need to add that in? If you're saying we should look at it, should consider...I think that's a valid concern that we should look and consider, but setting a set time period and then using that as the template for maybe any others without any departmental or agency...other agency input, I think is a bit premature at this point in time. I mean, I can see the Department saying that if the Department of Health definitely said you should convert at this point in time because it's an increase in use as a commercialization and la la la. But we don't have that here, and I think adding that on kind of robs, to a certain extent, the responsibility and authority of another department. That's just my comment.

Mr. Dahilig: I guess, you know, I would agree to the extent that we rely on...as a Clearinghouse, we rely on expert agencies to actually provide us feedback, etc. on these things. But I think overarching that what our responsibility from a departmental standpoint is to recommend to the Commission is things that also...keeping balance the health, safety, and welfare of the community. And the policy of the Environmental Protection Agency going back to 2005 has been, you know, cesspools are outdated; they're not good for our drinking water, they're not good for our environment, and they over time need to be replaced. Now I understand the financial cost that's involved, but I think what's being raised here is kind of the broader community responsibility issues relating to health, safety, and welfare, and if this is being asked of from a permission standpoint, is this the juncture where we say we would like to see, from a good neighbor standpoint, that you migrate over to what EPA calls as the current environmental practice standard right now. I think that's what it is, so it's...I mean, would there be an objection if the Director's Report were to be amended to require conversion within a forty-eight (48) month timeline from approval, given the statement of your applicant?

Mr. Chun: I would have to check with my applicant, obviously, on that, but you know, I hear what you're saying, but again, the question and the procedure is whether or not this particular application at this particular location will cause environmental harm. And I understand the

EPA's position because of the drinking water issues, and cesspools, and not only that, it's migration to the ocean and things like that, so I understand that. And I can understand if that were in this particular...because of the particular application and the particular place that there is a danger of that happening with this particular cesspool. If it was located over a known aquifer where drinking water is being taken or located as some places close to the shoreline where we have evidence that there is migration or there are problems of bacteria in the ocean that could be caused from leakages from cesspools. I understand that and I think in that particular case, yes that those concerns can be addressed because it may cause environmental harm. But to apply that to a situation where you have no facts like that at all, that I can see, you know, in this particular case, I don't know whether it would be justified. Now I would have to check with my client, but like I said, I'm not arguing that in terms of future ones, if you do see that as a problem, or potential problem, raise it. But where there is no evidence or facts to show it is a problem, or potential problem, I wonder...but I'll check with the client. If we could take a short recess, so I can check with my client on that.

Chair Anderson: Okay. Yes. Given that you would like to confer with your client, we'll take a ten (10) minute recess.

The Commission recessed this portion of the meeting at 4:22 p.m.

The Commission reconvened this portion of the meeting at 4:38 p.m.

Chair Anderson: Call this meeting back to order.

And just to advise, you know, the time during the day has gone by quickly. We're approaching the 5 o'clock hour. We will continue in the hearing until 6:30 p.m. and then we will break for the day. Rather than continue the hearing, any matters that have not been addressed will be posted for the next hearing in July, July 28<sup>th</sup>.

Mr. Chun: Understood, thank you. I didn't know the time went by so fast.

To complete the thought, when we last took a break, we were discussing the potential for converting to a septic system. My clients don't object to the fact that the septic system eventually will, as a matter of course, will probably be ordered by the EPA and Department of Health. The question really is timing, and I think my clients would want to impress upon the Commission some important factors: (1) we're talking about Po'ipū and Kōloa, specifically Po'ipū I guess. The Po'ipū area and this neighborhood is rock. So if you're going to install a septic system in rock, it's a different situation than installing it in soil and dirt. There's additional costs involved in the potential for disruptions of the other additional surrounding areas. The other thing is the cost of digging into rock to install a septic system is not your typical septic \$10,000-\$20,000 cost. It is...and my clients informed me that their neighbor has put one in because he did an ADU, it cost him \$35,000 to do that and that was a couple of years ago, so we're not talking about a small investment. In addition to that, they did...you know, I mean my clients have been looking into it because it's not something that they were ignoring. They were, in good-faith, were talking about it a while ago. But with the contractor they were talking about said if you do put one in there, their old banyan tree, which is their trademark in front of their house, will be...have to be removed because there is no other room to put the seepage pit and/or

the tank. So you're talking about a lot of different impacts; one the cost, one the visual impact on a tree which has been maintained there for a very long period of time. That being said, my clients are open to doing that, but believe an extended period of time of ten (10) years or a...or sooner if the Department of Health and/or EPA comes out with the rules mandating it, of course we will comply. But doing it in a shorter period of time, given the cost and the disruption to the property and the neighborhood, I think it's a...without any further facts to say the necessity of it, I think my clients would not...could not agree to that.

Chair Anderson: And just for the record, you're referring to a longer period of time. Can you be specific?

Mr. Chun: We said ten (10) years; ten (10) years probably. And just to let you know, the rationale...you know, we are aware, and I don't disagree with the Director in terms of that's where the EPA is coming from and the Department of Health, both of them. They have made (inaudible). In fact, they've also said they want to adopt rules saying that if there's a change or sale of the house, you'll have to convert to septic system. We know it's coming, and our position and my clients' position, if it comes it comes. We will have to abide it, but if you're asking us to voluntarily do that, giving the cost and the impact to the neighborhood and the other surrounding properties, we think a ten (10) year period would give...would be more than sufficient.

Mr. Dahilig: Madam Chair, I think...and the cesspool issue is a really broad...broader policy issue that a lot of us are wrestling with, but I think what is sound science, especially environmental health science, is that cesspools are not healthy for the public anymore. That's why they are no longer allowed and going back ten (10) years, ten (10) years this has been the new EPA directive to keep everybody healthy and safe. And it appears very...at least from the comments of the Department of Health, these are by law grandfathered in, but from a discretionary policy element because we are in a discretionary permit, is it sound policy to say, you know, let's take advantage of mitigating these health concerns when an intensification of use is being asked for. It may be within the parameters of what the Department of Health is saying, but from a broader health, safety, and welfare standpoint, we like to encourage uses that will comport with the good neighbor elements of a...that we all want to hold ourselves to. So you know given that, Madam Chair, and I don't make this lightly, I'd actually like to amend my Director's Report to include a condition, and the Applicant can raise objections for this, that the Applicant within sixty (60) months of approval, shall replace their cesspool with a septic system, unless a shorter conversion timeline is required by law. And I'd like to add that as an additional recommended condition to my report, orally, as part of my presentation to the Planning Commission.

Mr. Hull: For clarification for the Director's statement, was it sixteen (16) or sixty (60)?

Mr. Dahilig: 6-0, 6-0, so it would be sixty (60) months from approval.

Mr. Chun: Just for the record, we would object to that.



Chair Anderson: Your objection is noted. Just for clarification as well, there was discussion previously regarding changing the use of...the homestay use to two (2) bedrooms. Has the Department incorporated that into their final recommendations?

Mr. Chun: I would suggest that if you're going to be ordering a sixty (60) month time period that you at least give them the opportunity to get another \$100 per month rent, so I would request to maybe keep the three (3) bedrooms. My client said the two (2) bedrooms because we were not aware that the Commission was considering ordering them to spend \$35,000 or more within sixty (60) months. So if that's the situation, we would request to...we will withdraw our position of going down to two (2) bedrooms, and keep it as the requested three (3) bedrooms.

Mr. Dahilig: While maintaining your objection, so you would...

Mr. Chun: Maintaining my objection, yes.

Mr. Dahilig: So if we were to then drop it to two (2), you would also raise an objection to that as well?

Mr. Chun: Correct.

Chair Anderson: Okay. Are there any questions regarding the recommendations?

Does the Commission have a motion to proffer?

Ms. Mendonca: I have a question. Are we back to three (3) bedrooms or two (2) bedrooms?

Mr. Dahilig: We are...the recommendation is two (2) with a septic and both of those conditions are being proffered to the Commission that if they are approved by the Commission, it would be with the noted objections of the Applicant.

Ms. Mendonca: Okay, and the septic was based on how soon after?

Mr. Dahilig: Sixty (60) months.

Ms. Mendonca: Sixty (60) months?

Mr. Dahilig: 6-0 months, five (5) years.

Ms. Mendonca: Are there also conditions that should their financial status show that they are unable to do that, would we give them some consideration?

Mr. Dahilig: The Applicant can at any time, when meeting these deadlines, can always come before the Planning Commission and make a case as to why the timeline should be extended.

Ms. Knopf: Oh, that sounds wonderful. Great.



Chair Anderson: Okay, do I have a...

Mr. Katayama: I have a question. The Board of Health, in their comments, in their second sentence, is that correct? Strongly encourages the Applicant to upgrade the existing cesspool to a septic system at this time, or is it at the time that wastewater flows exceed 1,000 gallons per day? What is the intent of their comment?

Mr. Dahilig: I think we interpret that as meaning, essentially, its good policy at this time to actually make the change.

Mr. Katayama: And in the second to the last sentence, the "however" sentence.

Mr. Dahilig: However, these comments only apply if the floorplan submitted in Exhibit 1 is accurate. And they stated a discrepancy.

Mr. Katayama: That's between the five (5) and the four (4).

Mr. Dahilig: That's between the five (5) and the four (4). And so, the clarification is they went down to a four (4), and then...so I think that's where we still maintain the legitimacy of the comments at this time because it's prefaced upon the four (4).

Mr. Katayama: Well rather than a sixty (60) month conversion, what happens if we put a 1,000 gallons per day conversion? So if they are at a lower generation rate, would we still require them to convert to a septic system?

Mr. Hull: It would be unclear on how we would exactly monitor that.

Mr. Katayama: By their water bill.

Mr. Abrams: What if they water their yard plenty?

Mr. Katayama: Well they can argue that, but I mean that would be a good measure of generation. I mean, a lot of the sewer fees are based on that. They don't care how much water...exactly.

Chair Anderson: I'd like to just clarify, if we could move forward in discussion on a motion, then we can discuss either altering the recommendations...

Mr. Katayama: Well I think this is leading up to that motion to get a clarity on understanding the position of the Department. You know, I understand the conversion of cesspools. I guess the issue is the timeline and what is the right horizon for that.

Mr. Dahilig: I think it's a...not to use a pun, but I think it's kind of a fluid discussion. And I think the reason why is if you look at the first two (2) sentences again, it's ascertaining the fact that the usage does not exceed the 1,000. So currently there's not 1,000. But notwithstanding that, they're still saying, but still you should...the way we read it...but still you should...we

encourage the upgrade of the system. So if the condition were to say if you exceed a 1,000, I think automatically that that throws the usage into another category that Department of Health would probably say, if that was the usage already, they would be thrown into having to convert right away. I think what we're basing our recommendation on is, is more so because of the intensification of use and the discretionary request in front of the...notwithstanding the comments from the audience here, that if we actually look at what has been the sound environmental policy over time, which is to actually say we should migrate from cesspools to septic systems, that is what we're reading in the comments and I think that's what we, from a departmental standpoint, want to incorporate as sound environmental policy here for health, safety, and welfare reasons.

Mr. Katayama: But to the extent that the Applicant is reducing the number of rooms to 50% occupancy, wouldn't that reduce the impact...intensive use?

Mr. Dahilig: I guess, and I think that's...that's where these thresholds are...if you reduce the amount of usage from three (3) to two (2), as we're stating, I guess, per Commissioner Mendonca's suggestion, that we're getting to a situation where we're determining whether three (3) bedrooms or two (2) bedrooms...a third less of the usage in this manner is actually going to mitigate the health, safety, and welfare elements that we're concerned about here. I think that's...will it mitigate it some? Yes, it will mitigate it some; I concede that. But whether the continued disposal of wastewater in this fashion is sound policy, I think that's kind of a larger contextual issue that I'm...I think our recommendation goes down.

Mr. Katayama: But it's a broader reaching audience than just the applicant.

Mr. Dahilig: It's one of these...think global act local kind of situations...it is.

Mr. Katayama: So in adopting the Department's recommendation, I guess the conundrum is, you know, we recognize the use. If we curtail or it's less impactful, do we still require them to convert to a better system?

Mr. Dahilig: That's...I think that's the call that's before the Commission at this point. I think...and given our assessment throughout this discussion, the Department believes that it is sound policy to try to nudge compliance with what is sound environmental practices that have been on the books for ten (10) years.

Mr. Katayama: However, we are lessening community impact, and do we give them credit for that?

Mr. Dahilig: And I think that's where...given our recommendation that that can either be weighed or disagreed with through some type of action.

Mr. Keawe: I have a couple comments. You know, it's difficult I think...you know, we're all, especially the Department, under a lot of stress with regard to trying to get these applications out. But I think from a perception standpoint, especially from the applicants, they're coming here with information obviously that their attorney representative has and you see that we're

recommending approval, and then we start adding all this stuff at the end. You know, just from the standpoint of how that system works, if we could try to get all of that stuff done with the recommendation initially, rather than have someone come up, they've got their hopes up, yay we got preliminary approval, great, and then we start adding all this stuff on them. And rightly so, yes, we need to look at the environment and converting and everything else, but I think we should probably try to at least, if we're going to make a recommendation, include all of it in there, as much as possible.

Chair Anderson: Do I have a motion from the Commission?

Ms. Mendonca: Real quick. So we're talking sixty (60) months, right, that they need to do their cesspool, two (2) bedrooms, and is there going to be language in this recommendation to secure them that in that five (5) years, which is sixty (60) months, their financial status cannot handle this, but their cesspool works, that they can continue at least? I'm just trying to see the fairness in this like Wayne was trying to...because it's true, they're running on two (2) bedrooms now. And that to me, they are willing to do the septic tank and if the cost runs in that amount, \$35,000, you take that in five (5) years, that's a lot of money that they need to put aside for a new septic tank.

Chair Anderson: I think the discussion that's taking place...if we can hone in with a motion and if that needs to be...you know, there can be a motion proffered whether to accept the amendments, to not accept amendments. At least then we can have the discussion on how, if amendments are going to be accepted as set forth orally, or if there are other changes the Commission would like to entertain. But I think the proper procedure would be to have a motion, we can move on that with a second, and then go on with the discussion on what...on the motion that's on the floor.

Ms. Mendonca: I'll have a hard time wording this motion; that's the problem I'm having. I would move to accept the recommendations by the Planner, with a change from the three (3) to the two (2) bedroom, with the concerns since I brought up the septic tank. If it's sixty (60) months...if my motion being sixty (60) months with a consideration based on their financial status that we would allow them more time, or something in that language that would make it easier for them in five (5) years to get ready for a \$35,000 expense. I'm just having a hard time putting this in the proper language.

Chair Anderson: I believe the Clerk's drafting language to effectuate your comments.

Ms. Mendonca: While he's doing that, I would like to say to the Applicant, I can understand fully how difficult it may be with a \$35,000, or possibly even more, in five (5) years. And we hope we can get this language proper to suit everybody's concern and yet allow you the time, if you can't do that in five (5) years, that there's a grace period, if not longer, until such time that you can afford it; unless the Department of Health says you must do it now.

Mr. Dahilig: So what if we were to say, the Applicant, with the sixty (60) months of approval, shall replace their cesspool with a septic system, unless a shorter conversion timeline is required

by law. Should the Applicant be unable to do the conversion due to financial constraints, the Applicant may request an extension at the discretion of the Department.

Ms. Mendonca: Yeah. Is that alright?

Mr. Chun: I need to kind of discuss this with my clients.

Chair Anderson: Okay.

Mr. Chun: I hear...I mean, I think it's a good effort. I think it's something we should consider, but I need time to talk with my client on that.

Chair Anderson: Okay. We'll take a five (5) minute recess.

The Commission recessed this portion of the meeting at 5:01 p.m.

The Commission reconvened this portion of the meeting at 5:07 p.m.

Chair Anderson: Call this meeting back to order.

Mr. Chun: Thank you, Madam Chair. Before the break...we took a break in order for me to consult with my client to see what their position would be on the proposal that was in front of the Commission. My clients appreciated that and the efforts being made, and we wish to participate in those efforts; I think we're working in the right direction.

The financial difficulty is a big problem and I think...but I think as worded would be putting a little bit more discretion and just kicking the can down the road. We believe that the proposal by the Commission earlier, in terms of using something that at least you can document and make it sound that about 1,000 gallons, I think that would be easier. That way it's not discretionary on either parties' place; either we exceed the capacity or we don't. And it's not to anybody's discretion and it's not subject to interpretation. So we think that way of working out would probably be a better way to define the issue and the problem as it is, as opposed to leaving it up to some kind of decision later on at five (5) years. I think everybody understands the problem, it's going to cost a lot of time to get it...and money to get it done; and that is cost, but then how do you determine whether you have the financial ability? I don't think anybody wants to get into an argument five (5) years down the road whether you have the financial ability or not, and I'm trying to avoid that. I try to avoid that kind of situation, so I think the earlier suggestion of using 1,000 gallons, it's solid; I mean, at least it's either...it's there or it's not. And if it's there, then you got to change it, and if it's not, then we're okay; unless the Department of Health comes back and says do it now. To me, that would avoid having a lot of problems and potential dispute down the road, but I appreciate the effort; I think my clients appreciate the effort. On that, I think we're all trying to search for middle ground. I think we all recognize there is an issue that would be good to address, but how do we address it to everybody's satisfaction, I think, is what we're trying to search for, so we're trying to do it. My client would like to really mention, again, highlight the fact that putting in the septic system is not going to impact only their property, it's going to impact their neighbors. That banyan tree out there is a pretty old banyan tree and it provides shade for the entire...almost the entire...well I wouldn't say entire neighborhood, but at



least the neighbor next...to the left and right of you; and that's a benefit to those neighbors. If a septic system has to be done, that banyan tree will be gone because that's the only place that they can put it in at this point in time. But they just want to emphasize that, you know, we're not only talking about ourselves, we're talking about impact...we're impacting the neighbors also. I think the direction we're going is a good direction. I think we're willing to sit down. I think an objective standard, I think, would be better off for everybody...to serve all of us that way, rather than leave it at a subjective standard.

Chair Anderson: Okay. So hence far there's been some wordsmithing in terms of additional conditions and we've heard back from the objections from the Applicant. Again, we...in order to move forward on this, we'll need a motion from the Commission. So I ask the Commission, how would you like to move?

Mr. Katayama: May I ask what the Department's recommendations are at this point?

Mr. Dahilig: The Department's recommendations are the conditions as printed, along with the reduction in bedrooms per, I guess, the discussion that was previously not objected to, but then was objected to as a consequence of an additional...second condition, orally, to have a sixty (60) month approval for...sixty (60) month timeline from approval to replace the cesspool, and we would incorporate the suggestion by Commissioner Mendonca to also allow for extensions based off of financial constraints.

Mr. Katayama: So that is...what we're acting on?

Mr. Dahilig: Yeah, the Department's amended recommendations.

Mr. Katayama: Would the Department object to basing the conversion date from sixty (60) months to 1,000 gallons per day? Based on their water consumption.

Mr. Dahilig: I think the Department would take...at this point, take no position on that. I think we have...we have enforcement concerns about it, but it's definitely enforceable.

Mr. Katayama: By submission of their water bill.

Mr. Dahilig: Right, but we'd have to work that out subsequent to that, but we take no position should a motion be proposed to include that in lieu of the recommended condition.

Mr. Keawe: So was that either/or?

Mr. Dahilig: Since you were saying, it's up to you guys. (Laughter in background)

Ms. Mendonca: I'd like to make a comment. I'm reading this DOH, Department of Health, and I...it says here that they strongly encourage the Applicant to upgrade the existing cesspool to septic system at this time. We offered...I mean, my motion stated sixty (60) months and if they financially were not able to do so, that we would consider an extension on time, correct? What if



during that period, the sixty (60) months, the Department of Health says you do it now? They got to do it right?

Mr. Dahilig: That's in the condition.

Ms. Mendonca: Right?

Mr. Dahilig: Yeah.

Ms. Mendonca: So based on Wayne's question for 1,000 gallons per day, I'm beginning to see that that should not be a problem if in fact they exceed it and the Department of Health steps in, they would have to do it before the sixty (60) days...or sixty (60) months, excuse me. Because from what I'm reading, they're saying "strongly encourage" and I'm assuming that they may foresee some changes that may be coming in the near future. I don't know. So in my motion where I stated that that sixty (60) months, if the rest of the Commissioners have no objections, I would go along with the 1,000...if the Department has no objections.

Mr. Keawe: So are you saying that you would reword your motion?

Ms. Mendonca: Yeah because...

Mr. Keawe: To do it based on 1,000 gallons, as opposed to...

Ms. Mendonca: Yes, because they're objecting to agreeing to the sixty (60) months. Wayne questioned what would it be with the Department using the 1,000 gallons. My argument is the Department of Health is saying we're strongly encouraging this, which possibly...if they exceed the 1,000 for any length or period of time, we're saying you got to change it. Or in the sixty (60) months, the Department of Health may come by and say you got to do it now. So either/or, whether it's now, later, or tomorrow, they are still going to be responsible because I just asked the question, if in fact they agree to the sixty (60) months and in that five (5) years the Department of Health says you need to change this, they got to do it. So, we're still going in around the circles, but the 1,000 gallons, as Wayne suggested, might...might be the best route.

Chair Anderson: We need a motion...please.

Mr. Keawe: So are you going to amend the motion?

Chair Anderson: A motion, a motion. So far, it's been comments and wordsmithing about conditions.

Ms. Mendonca: Yeah, I didn't make a...I didn't know how to put the words together. I didn't make a motion.

Chair Anderson: And the Clerk cannot make a motion.

Mr. Keawe: Didn't Mike have some language that... (Laughter in background)

Mr. Katayama: Don't we have the Department's recommendation?

Chair Anderson: We have the Department's recommendations, so we can move on that. Or you can...

Mr. Katayama: That's what we need to move on?

Chair Anderson: Yeah.

Mr. Katayama: So I make a motion to adopt the Department's recommendation as presented with the two (2) additions.

Chair Anderson: Do I have a second?

Mr. Mahoney: Second.

Chair Anderson: Okay, discussion?

Mr. Katayama: In the matter relating with the cesspool conversion to septic, I would like to recommend that we adopt a flow...water flow criteria as the trigger point for conversion, as recommended by Department of Health of 1,000 gallons per day.

Mr. Abrams: Is that an amendment to the motion?

Mr. Katayama: It has to be an amendment because the Department is putting together a sixty (60) month conversion.

Chair Anderson: We can either act on your motion, or you can withdraw the motion and restate it if you want to amend that condition.

Mr. Katayama: Well, the Department takes no position on it. I'm willing to withdraw my motion if we can address the septic conversion issue.

Mr. Dahilig: So as Councilmember Kagawa likes to say it, I'm looking into my crystal ball here, and so let's go ahead and amend the Director's Report to say, Applicant, should they exceed 1,000 gallons of water usage, shall replace their cesspool with a septic system unless a shorter timeline is required by law.

Mr. Katayama: Councilman Kagawa is very wise in his words. (Laughter in background)

Mr. Dahilig: Is...I guess, just based on that, given the two (2) amendments and oral conditions, again, I would ask the Chair whether it is appropriate to approach the Applicant and determine whether or not they object to that or not.

Chair Anderson: Okay. Does the Applicant have objection to that condition?

Mr. Chun: It was read pretty quickly, but I thought it was read that should the Applicant exceed 1,000 gallons per day, wastewater flow, then the Applicant shall convert to a septic system.

Mr. Dahilig: Unless a shorter time...

Mr. Chun: Unless a shorter time is ordered by the Department of Health. Yes.

Mr. Dahilig: Or required by law.

Mr. Chun: Or required by law.

As to that, and we would accept that, that we would agree to the condition worded in that way. And also, we would agree to the three (3)...from three (3) bedrooms to two (2) bedrooms.

Mr. Hull: To clarify with the Director, was it 1,000 gallons of wastewater flow or 1,000 gallons of water flow?

Mr. Dahilig: Water.

Chair Anderson: Okay, so...

Mr. Chun: That would be fine.

Chair Anderson: Just for clarity and for procedural matters, Commissioner Katayama, do you withdraw your previous motion?

Mr. Katayama: I withdraw my previous motion.

Chair Anderson: Okay. And withdraw the second?

Mr. Mahoney: I withdraw my second of the previous motion.

Chair Anderson: Okay, and if we can have another motion.

Mr. Katayama: I move that we accept the Department's recommendation as stated.

Chair Anderson: Most recently. Okay, do I have a second?

Mr. Mahoney: I'll second that.

Chair Anderson: Okay. Any discussion?

Mr. Abrams: I don't think I can submit...support that motion. My personal feeling is, is that the Health Department should be the one who's making the call. If in fact the wastewater system goes over 1,000 gallons, you're going to have an overflow in the yard and they're going to be

coming down; not to mention the neighbors. And so I...we don't know when and I think that if it comes by law, it'll come through the Department of Health and it really shouldn't be the Planning Department doing that. I totally understand it. As for the intensification of use for a bed and breakfast, with what it was compared to which was a residential dwelling that had five (5) bedrooms in there full of kids and everybody else, that use to me was substantially more than what is going to be happening on this end; particularly with it not being 100% full. So all of those lead me to be less worried about the wastewater system at this point right now, and so I wouldn't support this with this 1,000 gallons of water. I think it really should be...if the Health Department was going to go ahead and say that you have to convert, they're going to tell you, you have to convert, so at that point I would leave it at that. So in any case, that's my position.

Chair Anderson: Is there any other discussion?

Okay, we'll call the matter. Let's go ahead and have a roll call vote.

Mr. Dahilig: Madam Chair, the motion on the floor is to adopt the Director's amended...orally amended recommendations concerning Class IV Zoning Permit Z-IV-2015-23 and Use Permit U-2015-22.

Commissioner Abrams?

Mr. Abrams: No.

Mr. Dahilig: Commissioner Mahoney?

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Mendonca?

Ms. Mendonca: Aye.

Mr. Dahilig: Commissioner Katayama?

Mr. Katayama: Aye.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Dahilig: Chair Anderson?

Chair Anderson: Nay.

Mr. Dahilig: 4:2, Madam Chair.

Chair Anderson: Okay, and so the application has been approved as amended...with the amended recommendations. Thank you.

Mr. Chun: Thank you, Madam Chair and members of the Commission.

Ms. Knopf: Thank you very much. I appreciate it.

Class IV Zoning Permit Z-IV-2015-24 and Use Permit U-2015-23 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Lili'uokalani Street in Kīlauea, situated at its intersection with Kolo Road, further identified as 2535 Lili'uokalani Street, Tax Map Key 5-2-011: 038, and containing a total area of 1.956 acres = Nicki Lorayn Pignoli Trust.

Mr. Dahilig: Madam Chair, the next application is Class IV Zoning Permit Z-IV-2015-24 and Use Permit U-2015-23. Again this is at Tax Map Key 5-2-011: 038, a total area of 1.956 acres. The applicant is Nicki Pignoli Trust.

Again, let's turn it over to Kaaina and Marisa for the report.

Mr. Hull: Aloha Chair. At the Chair's discretion, the Staff is willing to read a summarized version onto the record.

Mr. Dahilig: And just for the Commissioners, this is on the second of three (3) PDFs, again Page 358 starting on the PDF.

Mr. Hull: The proposal is to convert an existing residence into a homestay operation. The residential dwelling contains four (4) bedrooms and four (4) bathrooms. The parcel also has an ADU, or additional dwelling unit, which is attached to the lower level to the primary residential dwelling and is currently being rented on a long-term basis. As represented, the Applicant will continue to reside within the primary residential dwelling while operating as a homestay. For transient accommodation purposes, the homestay operation is proposed to utilize three (3) bedrooms within the primary residential dwelling.

Ultimately, similar to the previous application, the Applicant has a homeowner's exemption for the site, which ensures that the homeowner is using this site for their primary residence and will act as a self-regulating mechanism on those potential impacts to the surrounding neighborhood. And currently, the Department has not received a complaint from the Applicant...or concerning this property for its operational uses, and the Department has taken that as demonstrative of the fact that it is compatible with the surrounding area. Ultimately, the Department is recommending approval for these permits and the recommended conditions of approval stand as is.

Chair Anderson: Can I hear from the Applicant?

Mr. Chun: Good evening. Jonathan Chun on behalf of the Applicant, and with me is the Applicant, Ms. Pignoli. Also, I think we wanted the Commission and the Department to...we emphasize to the Department we did receive a letter of support from the Kīlauea Neighborhood



Association and to make sure that's in the record. Also, I think we sent a communication to the Department indicating that the...on the floorplans, the study playroom/alternate bed and breakfast area, which is an existing loft, is not part of the application, correct? So if there was any confusion from the Department or the Commission, that that area, which I believe was an ADU at one point in time or was...yeah, the ADU was downstairs, but the upstairs loft is not. And the ADU, which is the ground floor, is also taken up, correct?

Ms. Pignoli: The ADU is...

Mr. Chun: Yeah, but you're not...

Ms. Pignoli: No, we're not (inaudible).

Mr. Chun: Yeah. Also, I think the letters indicate the downstairs ADU, ground floor, is not...or should not be considered as not part of the application. So the Applicant only would be proposing to you is the existing main level floor, which is 1, 2, 3 bedrooms.

Ms. Pignoli: No, two (2).

Mr. Chun: Two (2) bedrooms only. Okay, yeah, but there's three (3) bedrooms total, so there's only two (2) bedrooms that they're requesting.

Chair Anderson: Okay.

Mr. Chun: And also, it is being served by a septic system currently.

Mr. Hull: The Department would have to establish and make sure that Jonathan is clearing that up for the record because the application states there's four (4) bedrooms on-site, with a request for three (3) bedrooms for transient purposes.

Mr. Chun: Yeah. I believe...didn't the letter clarify that? We took out the ADU and we indicated that the upstairs loft, which we labeled a bedroom, is actually a loft which should not be considered. But if that's not...I thought I said that, but if that's not what the case is, then we'll say it on the record today.

Mr. Hull: So with that then the Department would have to adjust its recommendation that it be...Condition No. 2 would read "For transient accommodation purposes, the subject operation shall be limited to two (2) bedrooms within the primary residential dwelling."

Mr. Chun: Correct. No problems on that.

Chair Anderson: And just for clarity, what again is the total number of bedrooms?

Mr. Chun: In the application, the application will only include...I thought we said it, but will only include the main floor of the dwelling. The bottom floor of the dwelling is an ADU; that is being rented out long-term, so we're not asking for permission to utilize that at all. The main

floor contains three (3) bedrooms; one (1) of the bedrooms is occupied by the Applicant, so we'll only be using two (2) bedrooms in the main floor of the house.

Chair Anderson: Okay.

Mr. Chun: And if you want, we can identify the...what bedrooms. It would be Bedroom 1 and Bedroom 3, as noted on the floorplans.

Chair Anderson: Which...the Exhibit?

Mr. Chun: Exhibit...Exhibit I, and it will be the second page of Exhibit I, which shows the main floor.

Chair Anderson: Does the Applicant have any other comments on the recommendations as set forth by the Planner?

Ms. Pignoli: Good afternoon Commissioners and Commission members. I'm Nicki Pignoli for the record. I bought this home in 2000, moved here with two (2) grandchildren that I was raising on my own. And when I bought the house, there was a room that was being used as a B&B; that was Room No. 1. Never had a big closet, was never ready to be raised...used as a main bedroom, and my grandchildren have since grown up, moved off-island, and it's now me and a small dog living in this house. I sit right next to Kilauea Stream, so it's a beautiful location. I have no neighbors at all on three (3) sides of the property, and the closest neighbor on the fourth side is over 300 feet away, so it's very isolated even though it's in Kilauea Town per se. I've enjoyed operating the B&B. It's given me the opportunity to share my love of this island, and my knowledge of the island, and some of its customs, and some of its wildlife with visitors from all over the world. I think, like Ellie, I make a difference in a lot of peoples' lives who get to come here maybe once in a lifetime that don't have the opportunity to really know what it's like to live in a place that's as wonderful as this. So I'd like to be able to continue. Oh, I have been paying my GET and TAT taxes throughout this entire time.

Chair Anderson: Does the Commission have any questions for the Applicant?

Mr. Katayama: In looking at Exhibit I again, where is the additional ADU?

Ms. Pignoli: The additional ADU...this house is built on the side of hill. Should I answer it?

Mr. Chun: You can, but...

Ms. Pignoli: It's built on the side of a hill, downslope, and the ADU is below the main level of the house.

Mr. Chun: It would be Page 3 of Exhibit I.

Mr. Katayama: So it's detached from the floorplan that's labeled Bedroom 1 proposed bed and breakfast, Bedroom 2, and Bedroom 3? And there is a loft.

Mr. Chun: Basically, it's a basement. The ADU is a basement area, or you know, below the main floor. Access is through an external staircase, yeah, external staircase, so it was constructed and permitted as an ADU. That ADU is being used as a long-term rental.

Mr. Katayama: And that's ADU ground floor?

Mr. Chun: Yes, that's on Page 3 of Exhibit I. And that...on the letter dated June 2<sup>nd</sup> or June 3<sup>rd</sup>, we specifically asked the Commission...or the Department to exclude that from the application.

Mr. Katayama: And what is the existing loft floorplan?

Mr. Chun: Where is it? It's on page...

Mr. Katayama: No, what is that use...intended use?

Mr. Pignoli: That's actually space where my grandchildren stay when they come home to visit.

And the plans that were submitted to you were architectural drawings that were submitted for a staircase construction before I purchased the house, so the alternative B&B issue was not of my writing; that existed in the plans before. We just submitted plans that we had rather than have plans redrawn.

So I'm only proposing to use Room 1 and Room 3, and I only use Room 3 if the parents in Room 1 have small children and they need extra accommodations.

Chair Anderson: Are there any further questions?

Okay, seeing none. If we can have the Department please read its proposed conclusions and recommendations.

Mr. Hull: As previously stated, we have come to the conclusion that the application for a homestay at this particular site would be compatible with the surrounding neighborhood and environment. And we're recommending that Use Permit U-2015-23 and Class IV Zoning Permit Z-IV-2015-24 be approved with the conditions. The recommended conditions of approval stand as transmitted with the exception of Condition No. 2, which we'll be amending to state "For transient accommodation purposes, the subject homestay operation shall be limited to two (2) bedrooms within the primary residential dwelling".

Chair Anderson: Okay.

Mr. Hull: This particular site has a septic system that DOH approved...has no objections to.

Chair Anderson: Okay. Does the Applicant agree with the conditions as set forth by the Department?

Mr. Chun: Yes, we would agree to the conditions as set forth by the Department.

Chair Anderson: Okay. And with the Commission, do I have a motion?

Mr. Abrams: Move to approve Use Permit U-2015-23, Class IV Zoning Permit Z-IV-2015-24 as amended.

Mr. Chun: Can I make one comment? Kaaina, would the Condition No. 7 be changed from 300 to 200? Because of the reduction in number of bedrooms.

Mr. Hull: Sorry, that requirement would also have to change because it's the Environmental Impact Assessment fee as established via parking, which would be established via bedrooms. So it would be \$200, correct.

Mr. Chun: I just wanted that clarification, thank you.

Chair Anderson: Thank you.

Mr. Abrams: As amended for the EIA fee.

Chair Anderson: Okay, do I have a second?

Mr. Keawe: Second.

Chair Anderson: Okay, any discussion? Okay, I just would like to make a comment. One of the concerns, and this has come up on the previous application, is that the use be ancillary to the main purpose of it being the primary residence. And just taking note that the reduction of number of bedrooms used definitely shows that, in terms of my mind as a Commissioner, that it's not the primary use...is not hotel, but it's still a residence that has a use as a B&B as well, so just wanted to note that on the record.

Is there any other discussion? (None) Okay, so all those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0. Thank you.

Ms. Pignoli: Thank you very much.

Mr. Chun: Thank you very much, Madam Chair and Commission members.

Class IV Zoning Permit Z-IV-2015-25 and Use Permit U-2015-24 to allow conversion of an existing residence into a homestay operation on a parcel located along the southern side of Aka Road in Lāwa'i, situated approx. 450 ft. south of the Kiani Road/Aka Road intersection, further identified as 3265 Huaka Road, Tax Map Key 2-6-013: 046, and containing a total area of 8,751 sq. ft. = Darryl L. Chong/Julie Beth K. Simeona Chong.



Mr. Dahilig: We're at Class IV Zoning Permit Z-IV-2015-25 and Use Permit U-2015-24 to allow conversion of an existing residence to a homestay. Again, it's Tax Map Key 2-6-013: 046. Applicants are Darryl Chong and Julie Simeona Chong.

I'll turn this over to Kaaina for his report.

Mr. Hull: Good evening again, Madam Chair, members of the Commission. I'll read a...at the Chair's discretion, I can summarize the report.

Chair Anderson: Yes, please, summarize.

Mr. Hull: The proposal is to convert an existing residence into a homestay operation. The residential dwelling contains three (3) bedrooms and three (3) bathrooms. As represented, the Applicant will continue to reside within the dwelling while operating as a homestay. For transient accommodation purposes, the homestay operation is proposed to utilize one (1) bedroom within the residential dwelling.

Similar to the other applications, the Department holds that a homeowner's exemption has been established for this particular site, in which the owner will act in a self-regulating manner of the operations on-site and should ensure compatibility. Furthermore, the Applicant...the operation has been ongoing previously, and the Department has not received any complaints and that can be used demonstrative of the fact that they're...that they are in fact compatible with the surrounding neighborhood. So ultimately, the Department is recommending, preliminarily, approval for this particular application and the recommended conditions of approval stand as is.

Chair Anderson: Are there any questions for the Planner?

Mr. Hull: Also, to clarify, originally the Department of Health submitted a...comments that recommended denial because this particular site did not have, or does not have an approved wastewater system. Since that time, the Department of Health submitted a secondary, or amending comments that state that the Applicant has satisfactorily addressed the Wastewater Branch's concern and in which, and you folks have these comments, it states "we have objections should this application be approved". I spoke with the Wastewater Division Head and he said that that was a typo. It should state "we have no objections should this application be approved". So ultimately, Department of Health has...does not have any objection.

Mr. Chun: Also, just...Kaaina, we have an amended letter, May 26, 2015, which yeah, basically corrected the typo. If you want that, I could give that to you also. They corrected the typo, yes.

Chair Anderson: Okay. Does the Commission have any questions for the Planner?

Then I'd like to ask the Applicant if you have any comments or clarifications you'd like to make at this time.

Mr. Chun: No, we would agree with the recommendation of the Department as read. I know everybody's asking, well what about the septic system. I mean, if the Department so chooses,



they could address that issue again, but my understanding is from the Department of Health side, their wording was even less than the previous one; it just says they have no objections, that the Applicant has satisfactorily addressed the Wastewater Branch's concern. So, they did not even put any kind of language, in terms of 1,000 gallons design capacity or so. And I gather from talking with my client that one reason...it was a very deep cesspool you have there?

Darryl Chong: Thirty-one (31) feet.

Mr. Chun: Thirty-one (31) feet cesspool, so yeah it's pretty deep. So that might have been one reason why the Department of Health doesn't have any more concerns once the Applicant went in and indicated to the Department of Health where their current cesspool is located.

That's all the comments we have. Do the Chong's have any comments? If you want.

Mr. Chong: I just want to say thank you Commissioners and Madam Chair. Just to let you folks know that Julie and I raised three (3) kids in this house; they've all since moved out. And basically, we took time to do a project as a married couple and we decided to do this homestay. It has been very...very good for our marriage, in that sense of having been married twenty (20) years. But the thing that I wanted to also say is that when we do have guests stay with us, it is only one (1) person or a couple at any one time and there is only that one (1) master suite that we utilize as the rental. That's all, thank you.

Chair Anderson: Does the Commission have any questions for the Applicant?

Okay, then we can go ahead with the Planner's recommendations.

Mr. Hull: As previously stated, the Department has concluded the proposed application will be compatible with the surrounding neighborhood and environment. And ultimately recommending that Use Permit U-2015-24 and Class IV Zoning Permit Z-IV-2015-25 be approved, and we stand by the original recommended conditions of approval submitted to the Commission on June 9<sup>th</sup>. Thank you.

Chair Anderson: Okay. And the Applicant...do you have any comments or do you agree with the conditions as set forth by the Department?

Mr. Chun: The Applicant would agree with the conditions as set forth in the June 9<sup>th</sup> report.

Chair Anderson: Do I have a motion from the Commission?

Mr. Katayama: Move to approve Department's recommendation.

Ms. Mendonca: Second.

Mr. Keawe: Second.

Chair Anderson: We have a second by Commissioner Mendonca. Okay, any discussion?

I don't see any discussion. So for the record, I would just state my concerns because we...looking at these homestay applications and the triggers that are required at this time by DOH may not have been met to require conversion to septic, but I think that the long-term issues that have been discussed on previous applications apply anytime there is a conversion of a use and more intensive density on a property that that is...would be appropriate time to require the stricter environmental regulations and I think it's just a duty of the Department to look at those long-term issues. It's not something that's going to be solved tomorrow, but would like to have it solved in the near future so that our children can safely swim in the rivers, and the ocean, and so on. And, you know, for the fact that most waterways here in Kaua'i do not meet the safe water conditions and are actually dangerous, so just wanted to, you know, highlight that concern; that it's not going to the individuals and trying to put burdens on them, but recognizing that this is a long-term issue that's a requirement of Commission's such as us to address and look at very closely.

So with that, is there any further discussion? Okay, so we'll go ahead and all those in favor? (Voice vote 5 ayes) Any opposed? Okay, I'll note my objection and we'll go forward, okay. Given...seeing that there are five (5) in favor, one (1) opposed, the motion carries 5:1.

Mr. Chun: Thank you Madam Chair and members of the Commission.

Mr. Chong: Thank you.

Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29 and Special Permit SP-2015-10 to allow conversion of an existing residence into a homestay operation on a parcel located along the southern side of Kalama Road in Wailua Homesteads, situated approx. 2,000 ft. west of its intersection with Opaekaa Road, further identified as 6471 Kalama Road, Tax Map Key 4-2-002: 026, CPR Unit 2, and affecting an area approx. 3.68 acres of a larger parcel = Samuel A. & Eugenia Caliendo.

Mr. Dahilig: Thank you, Madam Chair. We are now on Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29 and Special Permit SP-2015-10 at Tax Map Key 4-2-002: 026, CPR Unit 2. The applicants are Samuel A. and Eugenia Caliendo.

I'll go ahead and I'll turn this over to Kaaiana for the report on this matter.

Mr. Hull: Again, at the discretion of the Chair, the Department can read a summarized version onto the record.

The proposal is to convert an existing residential guest cottage into a homestay operation. As represented, the Applicant will continue to reside on-site while operating it as a homestay. For transient accommodation purposes, the homestay operation is proposed to utilize solely just the guest cottage.

As previous...similar to other applications that this body has recently approved, there is a homeowner's exemption for the site which ensures that the owner is using the primary residential

structure as their primary residence and will act in a self-regulating manner on the operations, as well as the Department has not received any complaints against this particular operation. Considering the Use Permit of this application, the Department finds it will be compatible with the surrounding neighborhood.

In addition to the Use Permit, the Applicant is also requesting approval of a Special Permit and that's because the Applicant...the proposed operation is on State Land Use...within the State Land Use Agricultural District. Ultimately, the Special Permit is utilized to ensure that the proposed operation was not outright permitted under HRS 205 on agricultural lands that is not contrary to the objectives of HRS 205, which is the promotion, protection of agricultural lands for agricultural production. Ultimately, the Department has found they have submitted documentation that demonstrates that their farm operation makes more in sales than the homestay operation. And in so doing, the Department has determined that the farm operation on-site is the primary function of the property and that the homestay operation is accessory to that farm and indeed still serves, or functions, in a way that is compatible with the objectives established under Hawai'i Revised Statutes Section 205 and we're recommending approval of that Special Permit.

Mr. Dahilig: I'm sorry, just for the Commission's reference, it's the third PDF, Page 308; in case you want to reference.

Mr. Hull: And so that's ultimately the Department's conclusion and we stand by our recommended conditions of approval.

Chair Anderson: Does the Commission have any questions for the Planner?

Okay, are there any questions? I see we have the Applicant here, if you have any comments on the Director's Report.

Eugenia Caliendo: Well, to all of us, it's been a long day, so thank you for sort of getting us in. We're not used to really speaking in public, so forgive us if we ramble a bit. But you know, when you look at what the intent...

Oh, I'm so sorry, it's Gina Caliendo from Wailua.

Chair Anderson: Thank you.

Ms. Caliendo: Thank you. When you look at what the intent of the Statute, and the requirements, and the regulations are, you know, clearly the intent is to permit homestay as an accessory function to a verifiable farm operation. And I appreciate the language that said that we were able to substantiate that because we certainly have been doing it. We've had an agricultural business since 2001, homeowner's exemption since we built our home there in 2004, and starting to do a homestay in 2007. And really what we have found over the years and over the time, and currently we have ceased operation for quite some time, but what we found is that in the world itself, there's a recognized trend toward agricultural tourism and toward sort of way of life

vacations. If we are not the perfect place to be supporting way of life vacations, I really can't think of another place that is more appropriate for that.

The guests that we welcome are like-minded, so they come to a farm and they are early to bed, early to rise; just like we are. We love that there's a 10 o'clock curfew; we actually have a 9 o'clock curfew where we require that people sort of close it up for the day. And I think that having daily interaction with people from all over the world, and we have welcomed guests from all of the world, with, you know, an owner-occupied resident manager, which is a fancy way of saying my husband, who interacts with them daily, really helps to raise awareness of issues like farming here and sustainability, and what that means for an island and what that means for all of us, whether we are originally from here or whether we have chosen to love this place and be here ourselves. So that is really the only comments...those are the only comments I have. Thank you.

Chair Anderson: Thank you. Okay, does the Commission have any questions for the Applicants?

Mr. Keawe: I got a couple...just real quick, Madam Chair.

Chair Anderson: Yes, please.

Mr. Keawe: Okay. Are you still raising or growing the nursery? Palms and things?

Ms. Caliendo: Yeah, you know, when the economy was booming for all of us, we had a very, very large operation in terms of nursery proper. But like every other business and every other sort of response to the economy, we have sort of retooled a little bit and we still have nursery, but what we've moved into is a lot of contract growing, and a lot of starts and seedling productions because the speculative retail market is non-existent these days for homeowners. We also have a large goat producing facility, so we've been doing that. And the plan, quite honestly if we are lucky enough to be approved today, would be to continue and to grow that agricultural operation because this will allow us the ability to continue to sustain that. So a long answer to say yes.

Mr. Keawe: I'm familiar with that. I live in that area.

Chair Anderson: Okay, any other questions?

Mr. Katayama: Madam Chair. Is there a floorplan that's part of the application?

Ms. Caliendo: For the building? Yes. It is in here, and you have to excuse me, it's going to take me...

Mr. Katayama: Do you know what exhibit that is?



Ms. Caliendo: Yes, I will have it for you in just a moment. So our request is to use our existing guest house. And...you know, I have to apologize, I believe that we have a plot plan in here, which is Exhibit H, and I don't think there is an actual floorplan.

Mr. Katayama: Okay. I got the plot plan.

Ms. Caliendo: Okay.

Mr. Katayama: So could you describe the guest house, please?

Ms. Caliendo: Certainly.

Sam Caliendo: Hi, I'm Sam Caliendo. The guest house is 500 square feet with a 160 square foot lanai, not covered; there is no cabinets in the guest cottage, there's no stove. We rent it vacation wise that people should come and use our restaurants on the island. One (1) bedroom, two (2) occupants at max.

Mr. Katayama: In your Schedule F...

Ms. Caliendo: Yes.

Mr. Katayama: Line 8...

Ms. Caliendo: Okay, schedule F...

Mr. Katayama: What is the source of the other income?

Ms. Caliendo: So our Schedule F...our tax return. And I'm sorry, what line are we looking at?

Mr. Katayama: Eight (8). Part 1, line 8.

Ms. Caliendo: So which year?

Mr. Katayama: Any year. '13, '12, pick one, '11.

Ms. Caliendo: 2001 it was zero (0), so let me go to the year you are looking at.

Mr. Katayama: I'm just looking at '13.

Ms. Caliendo: Gosh, I wish I would've had my Accountant here to answer that question for you. So I do believe, and if I could go to my GE, I do believe that that would be the sum of everything that runs through the business, including the accommodations, and any other services that the business provides that is not hotel...excuse me, retail or wholesale nursery products per se.

Mr. Katayama: So the proceeds from your homestay is in that line?

Ms. Caliendo: I believe so, yes. And if you look...I think perhaps a better place to look would be at the actual GE filings that we submitted as well, as part of the addendum. And that would be contained in the Planning Director's Report, it was added as an exhibit at the end. And that's just the actual breakdown between what was wholesale and retail, and if there were any other activities that were recorded as income.

Mr. Katayama: Do you know what exhibit that is?

Mr. Dahilig: It should be starting with...yeah, start with

Mr. Katayama: Is that B.?

Mr. Dahilig: Yeah, B., Page 383 of the PDF.

Chair Anderson: Does the Commissioner have any further questions on this item?

Commissioner Katayama, do you have any other questions?

Mr. Katayama: Just probably a comment. Do you do your own tax return?

The Caliendo's: No.

Mr. Katayama: And this is professionally done?

The Caliendo's: Yes.

Mr. Caliendo: It's a corporation. It's done under an S Corporation.

Mr. Katayama: Thank you.

Chair Anderson: Any other questions from the Commission?

Okay, I had a question for the Applicants. As we've seen on previous applications, is your wastewater system...is that one (1) cesspool or do you have two (2) cesspools?

Mr. Caliendo: There are two (2) twenty-five (25) foot cylinders, five (5) feet in diameter, and they're...right on...I take care of them every month; I treat them.

Chair Anderson: And that's...one (1) is for the guest house use or...?

Mr. Caliendo: No, they flow...one flows into the other.

Chair Anderson: Okay. Okay, and are...the recommendations from the Department of Health was similar to previous recommendations that they strongly recommend updating to a septic system. Do you have any plans to update your system?

Ms. Caliendo: We don't have any plans to update, no. But we certainly would...hear what you have to say about it.

Chair Anderson: Okay. There's been conditions that have been discussed today regarding a timeframe to update. You know, there's different applications, different situations, but just to ask you, would you be opposed to say a sixty (60) month timeframe to update your cesspool to a septic?

Ms. Caliendo: I think as we look at it, and certainly we have heard all the comments, and we're thinking about it along the way. When you look at the fact that we are asking for a one (1) bedroom accommodation for two (2) additional people on a five (5) acre parcel, and we are a family of two (2) so there are no other people in the household using it at all, that perhaps a longer timeframe. I mean, it is a farming operation, so you know, finances are certainly what they are, but given that, I don't think we would be opposed to doing it, but perhaps with a longer timeframe. So we would suggest something like, maybe, ninety-six (96) months? Something along those lines.

Chair Anderson: Just in terms of...we've been discussing the requirements and just to make it clear that if you were to have built your ADU in 2005, that it would have been a requirement to have a septic system, so that was ten (10) years ago that that change was made.

Ms. Caliendo: Yes.

Chair Anderson: Okay. Are there any other questions to the Applicants?

Okay, we'll go ahead and read your conclusions and recommendations for approval.

Mr. Hull: As previously stated, the Department is...has concluded that the application meets the parameters of the Use Permit, Class IV Zoning Permit, and Special Permit, and we are ultimately recommending that Special Permit SP-2015-10, Use Permit U-2015-29, and Class IV Zoning Permit Z-IV-2015-30 be approved and the Department stands by its presented...or recommended conditions of approval at this time.

Chair Anderson: Okay. And does the Applicant agree with the conditions as set forth by the Department?

Ms. Caliendo: We do. The only thing we would like to ask for consideration on, for everyone pretty much, is Item No. 3 that talks about the subject property's farm exceeding the sales generated all the time. And we would ask the Commission to consider perhaps a longer period of review as you look at ours and all the other agricultural permits that are going to come before you, only because climate and market fluctuations. You know, farming is a sort of where they say you put a seed in the ground and you say a prayer, but there's really a lot of truth to that. And so, as someone who is influenced by this, but as someone who is also a resident here, I think there may need to be a little bit more consideration of whether a simple comparison of Column A to Column B is the correct approach, or if rather, maybe looking at a period of five (5) years, or looking at a longer timeframe would be something that would be considered.

Mr. Dahilig: If I could just address that, Madam Chair. I think if you look at the condition, the condition actually is devoid of the word "shall".

Ms. Caliendo: Devoid of the word...?

Mr. Dahilig: Devoid of the word "shall". And I think if...at the end of the day, this becomes an enforcement mechanism for the Department moving forward. And so, like anything, I think it leaves it up to the interpretation of the Department down the line to look at...you can make a case whether or not enforcement should be warranted or not warranted should this condition be called into question by whoever's enforcing down the line. So I think if you read it without the word "shall", it's meant to be actually more flexible from an enforcement standpoint, but the spirit is actually there to try to encourage that to be the standard.

Ms. Caliendo: Okay, thank you.

Mr. Hull: I'll just clarify, also, too that there's another condition of approval being recommended; that there be annual recertification at which time we...the recommendation is that documentation from Federal, as well as State taxes, be presented that demonstrate that the sales do exceed.

Ms. Caliendo: Yes, so that's an annual.

Mr. Hull: Yeah. The Department is sympathetic to those concerns and I think you guys have definitely demonstrated that you are a bona fide farm above and beyond the HRS minimum definition. However, in calling out and establishing that bona fide farm operations are going on on-site in conjunction or should I say, as a primary function of this site, there's been so much rampant abuse above and beyond, and that's not to lay any criticism with you folks because you folks have definitely demonstrated that through your sales, but there's...anything beyond sales, the Department is quite frankly seeing a lot of abuse and would be hesitant about entertaining anything beyond that Column A versus Column B approach. But we are sympathetic to those concerns from you folks, but the Department would still stand by their recommendation that it be held.

Chair Anderson: Okay. I have a question for the Planner in terms of addressing that, and that issue has been brought up in testimony previously, and the nature of businesses I understand it can go up and down. Rather than the language that the subject property's farm and sales of products from the subject property's farm exceed those sales generated from the homestay operation, that the sales will be...if this is an annual renewal, that the sales will be looked at as one way of analyzing whether the homestay is ancillary to the farm. Instead of it being the sole way of making that...having that discretionary line of whether or not it's a farm or not based on the amount of money it makes in a particular year.

I think that...that issue may have been clarified with the issue of the use of "may" versus "shall", as previously pointed out by the Director.



Mr. Hull: Did you need me to respond?

Chair Anderson: If you had something...if you wanted to clarify further.

Mr. Hull: No.

Chair Anderson: Okay, any other questions?

Mr. Katayama: Madam Chair, I think I have a...sort of a...comment on the approach. You know, we've addressed homestays, basically in residential areas. I think that's the methodology used to identify the impact and to look at, you know, whether it's appropriate or not, I think is correct. Now as we get into ag land, and rightly so, they...this applicant is a Sub S Corporation. They should not have a homeowner's exemption on that...or I don't think they have. Do you have a homeowner's exemption?

Ms. Caliendo: On our home? Yes.

Mr. Caliendo: We own the home; the corporation doesn't. We just run the business, the nursery.

Mr. Katayama: So the ADU that's reported in F, is that part of the homeowner's exemption?

Mr. Caliendo: We don't have...

Ms. Caliendo: Well the guest house. He's...

Mr. Katayama: The guest house.

Ms. Caliendo: Well the exemption is part of the property and the guest house, I mean, is as defined by the County, it's an extension of your home, so I don't quite know the answer.

Mr. Hull: To clarify, the way the guest cottage essentially functions is...and I kind of stated this to some confusion on the Council...it essentially functions as an excess, or exterior bedroom, to the primary residence. So when the Real Property Division assigns a homeowner's exemption, it's inclusive of the primary residence, as well as the guest cottage.

Mr. Katayama: Say that again.

Mr. Hull: The guest cottage functions as an accessory, albeit an exterior bedroom, to the primary residential dwelling. And as such while it's excess, it is exterior, it functions as a part of that dwelling. So the real property assignment of a homeowner's exemption goes to the primary dwelling and its accessory guest cottage.

Mr. Katayama: I mean, this is sort of a technical term, but if they're allowed to depreciate that property, is that still subject to homeowner's exemption?

Ms. Caliendo: Well we don't depreciate the...no because...may I answer that?

Mr. Caliendo: Sure.

Ms. Caliendo: Is that okay?

Mr. Katayama: I think it's more of a philosophical question, I mean, it's a procedural question.

Mr. Hull: I'm not sure about that. We would have to check with Real Property, Commissioner.

Mr. Katayama: And how do you ensure that homestays are compatible use with existing agricultural operations?

Mr. Hull: The existing on-site or the existing...?

Mr. Katayama: On-site.

Mr. Hull: Well, we've also...essentially because we found them ancillary to as opposed to the primary function of the property; that's essentially the Department's assessment.

Mr. Katayama: And how do you define ancillary?

Mr. Hull: It's making less than the actual farm itself.

Mr. Dahilig: I think we run into this philosophical discussion constantly regarding what is "farming"? And it's something we struggle with because of the lack of clear definitions from State law, but what is clear from the State law is that they do talk about accessory uses to farming. So when we are interpreting and evaluating these Special Permits, we, philosophically, want to try to understand why, if you're asking for a Special Permit, you are wanting to go outside of what is permissible on the property, as to try to tie people as close as much as possible to what is the policy of the State, which is to encourage farming. So when we look at the amount...the metrics that are out there to determine bona fide farming, we're not given many elements of statutory guidance when it comes to that. We have...and the closest thing from a County standpoint that we have policy wise is what you saw before you today concerning the \$35,000 threshold with farmworker housing. And so, we take that...that perceived metric of using the revenues that are derived and say okay what then, from a State policy standpoint, are you doing that is accessory? That's the best we can piece together given the guidance that is out there. So we take a look at their Schedule F's, which is a practice that we do for farmworker housing, and we say okay, where are you getting your income here? Or how does this compare to your homestay operation? And try to see whether or not the emphasis on using the property for its intended use is really pushed towards the agricultural side or if it's pushed towards the homestay side. Is this the metric that people agree with? A lot of people don't agree with it. And I want to be very clear about that, but given the policy guidance from the Council, this is the closest thing that we can use from a numerical standpoint to try to provide a fair and balanced evaluation for each of the...each of these applications that are out there. So, you know, could you cut the pie another way? Could you say well how many fruit trees do you have on the property? That is another approach that was used when we were approving the ag TVRs. How

many home...how many papaya trees do you have? How many...and so we did an inventory, but there was also public concern about us, and whether or not that is evidence of the veracity of a true farming operation. So it's something we struggle with. I think if we look at the metric we are using in this particular case, which we know under penalty of perjury, these people disclosed to the IRS and to the State that we can ascertain that the emphasis really is more on the farming side versus on the homestay side. And so that's why we've given our recommended approval for at least the Special Permit portion.

Mr. Hull: If I could also add to the Director's comments, concerning the review and using the number of trees say, with the TVR ag applications, since that time, the Hawai'i State Legislature amended HRS 205 concerning say overnight accommodations and having it tied to a bona fide farm and defining bona fide farm as hinging on a revenue stream. They aren't...they don't say the specific standard or amount for the revenue stream, but that there be actual sales involved, and so that is part and parcel why the Department has shifted their assessment of Special Permits and overnight accommodations. And saying that absent...you know, a number being set by the State Legislature, we have to come up with a number that demonstrates that the farm is the primary function of the property, and that the homestay operation is not. In our assessment of it, it's that the sales exceed...of the farm exceed the homestay operation. But at the end of the day, that's a recommended line and philosophically what this body is going to be facing, with all the agricultural applications is, where do you draw that line? This is where the Department is recommending to draw the line. But like Mike said, there's no specific standards set. You can point at the farmworker housing, you can point to the definition of bona fide, but...of a bona fide farm, but there's no specific line, so ultimately this is our recommendation and we do stand by it. But whether or not you folks decide to adjust that line to be more lenient, or to adjust that line to be more conservative, that is your prerogative and it's going to be a question that is going to happen on a lot of these applications because there are a fair amount of agricultural homestay applications that will be coming before you folks.

Mr. Dahilig: And so it really is a struggle to try to provide the Commission, when we provide these recommendations, a real rational basis for what reasonably could have been interpreted...be interpreted as trying to evaluate whether or not something really is, as your saying Commissioner, not the primary function of the operation out there. And again, people can have their disagreements, but this is as close as we can get from an evidentiary standpoint and a rational basis standpoint to say okay this is what we can use to determine that this is as close to an accessory use as possible.

Mr. Abrams: Madam Chair. The \$35,000 for the farmworker, was that the Council setting that amount? Or where did that number come from?

Mr. Hull: The Council set that amount, and actually as was established previously with another Council...Maui County had previously adopted farmworker housing standards and hinged it upon the \$35,000 threshold. So essentially, our County Council adopted it with a few different measures as well though.

Mr. Abrams: Okay, thank you.

Chair Anderson: Okay, so just to clarify, the Applicant...you're in agreement with the conditions as set forth by the Department?

Ms. Caliendo: Yes.

Chair Anderson: Does the Commission have a motion?

Mr. Abrams: Move to approve Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29, and Special Permit SP-2015-10.

Chair Anderson: Okay, is there a second?

Mr. Keawe: Second.

Chair Anderson: Okay. Any discussion?

If there's no other comments from the Commissioners, I'll just state for the record again, my ongoing concern with approving Use Permits for increased density on property and on properties that have not upgraded their systems to septic. So that's an ongoing objection that I have.

Mr. Katayama: May I make a comment also? If we look at the applicants' submission of their income stream from farm and room rental, and if that is a criteria that we're using to describe ancillary use on agricultural land, I think that dilutes the agricultural activity. Now, I think we need to develop a criteria that addresses ancillary use upon agricultural land, and we've done that, you know, in looking at photovoltaic expansion and some of these others. But in terms of homestay, I think...if you look at this trend, it's biased towards more homestay, and if that continues then it would probably diminish the attractiveness of farming operations because there's less risk. So again, you know, I think the Department has stated it quite well in that this is an ancillary use to the farming operation. But if you look at the revenue stream from 2007 or 2001, is that the conclusion that we get? And I think the use of the term "homestay" for agricultural or lease in any kind of LLC or Sub S, we need to change and just look at it as another revenue stream for agricultural use. I think homestay is really a part and parcel of residential conversion as opposed to again, ancillary use in an ongoing business concern. And you know, I appreciate the Applicant's position and their presentation of their situation, but I have a challenge with it from a Commission approach as opposed to the Applicant. I think they did a great application, but as a policy moving forward on granting ancillary use on agricultural land, I think I have an issue with that.

Chair Anderson: Is there further discussion?

Ms. Mendonca: Yeah. I have to agree with what Wayne is putting in front of us, but on the same token using what the Planner stated about what is the cutoff point? Here comes the question again, which comes first? Do we make a policy regarding homestay on agriculture? Or do we set a different criteria for how much of the income should be ancillary instead of using \$36,000 (sic) as a random figure? Again, it's confusing. We can deny this recommendation because of the fact that it is agriculture, and you all know how I feel about agriculture, but at this



point, what other avenues do we have to set a criteria to what your concerns were or are in line with what the Planner's recommendation as a ballpark figure using to determine what's ancillary over farming. So where do we go?

Chair Anderson: I'd just like to note, looking at the time, that we're approaching the 6:30 hour.

Mr. Dahilig: Yeah. By collective bargaining rules, I have to stop at 6:30. So you know, that requires a forty-five (45) minute break and then we can reconvene.

Chair Anderson: Okay. So the question...there's been some questions posed, comments for discussion. We have just a few minutes, so if there is any further response, I would say that we would have to continue this matter. If not, then we can take a vote in the next few minutes, so it depends.

Mr. Hull: I'll also point out, too, some of Commissioner Katayama's concerns and I definitely think there is concern about overnight accommodations on agricultural lands, which is why the Department is recommending this...the Department has never recommended for Special Permits such a high threshold, quite frankly, on other applications. But the Department receives that overnight accommodations are particularly concerning for agricultural lands because of the potential impetus to remove those lands from agriculture production. We found that this is the best way we can slice this pie, at the same time considering other standards, is also establishing them via a legislative route, and the Department is bringing back the Comprehensive Zoning...or Comprehensive Homestay Bill to this body in which specific standards will be deliberated for homestay operations in or outside of agricultural districts. Thank you.

Chair Anderson: We have a motion on the floor and a second and discussion. If there's no further discussion, then we can go ahead and call the question. So I would like to take a roll call.

Mr. Dahilig: The motion on the floor is to approve Class IV Zoning Permit Z-IV-2015-30, Use Permit U-2015-29 and Special Permit SP-2015-10.

Commissioner Abrams?

Mr. Abrams: Aye.

Mr. Dahilig: Vice Chair Mahoney?

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Mendonca?

Ms. Mendonca: Aye.

Mr. Dahilig: Commissioner Katayama?

Mr. Katayama: No.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Dahilig: Chair Anderson?

Chair Anderson: No.

Mr. Dahilig: 4-2, Madam Chair.

Chair Anderson: Okay. So with the 4-2, the application is approved with the conditions as set forth.

Mr. Caliendo: Thank you.

Chair Anderson: Thank you.

## **ANNOUNCEMENTS**

### **Topics for Future Meetings**

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, July 28, 2015.

Mr. Dahilig: With that Madam Chair, we have actually cleared the calendar. We do have...we have distributed the topics for the future meetings and that the next scheduled Planning Commission meeting will actually be in a month, Tuesday, July 28, 2015.


And with that Madam Chair, I'd actually like to wish our best wishes, on behalf of the Department, to Deputy Director Hull as he is about to get hitched in the next few weeks, so I'd like to convey our congratulations to him.

Chair Anderson: Congratulations, and with that, we will adjourn the meeting.

## **ADJOURNMENT**

Chair Anderson adjourned the meeting at 6:25 p.m.

Respectfully submitted by:

  
Darcie Agaran,  
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.